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EXTRAORDINARY

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ELECTION COMMISSION, INDIA**NOTIFICATION***New Delhi, the 17th March 1954*

S.R.O. 1119.—Whereas the election of Shri Bansi Das Dhanger, as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Karhal-West cum Shikohabad East Constituency of that Assembly, has been called in question by an Election Petition jointly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by the persons named in column 2 of the schedule to the Commission's notification No. 19/287/52-Elec. III dated the 29th August 1952;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL FAIZABAD AT LUCKNOW.**ELECTION PETITION No. 282 OF 1952****PRESENT:**Sri Raghunandan Saran, (Retired Distt. Judge)—*Chairman.*Sri M. U. Faruqi, (Retired Distt. Judge)—*Judicial Member.*Sri A. Sanyal—*Advocate Member.**Petition under sections 80 and 81 of the Representation of the People Act, 1951.**(Karhal-West-cum-Shikohabad-East Constituency of the U. P.
Legislative Assembly).*

1. Sri Shiv Dutt S/o Shri Manohar Singh R/o Sarakh, Pargana and Tahsil Shikohabad, Distt. Mainpuri, P. O. Chandikara.
2. Sri Balwant Singh, S/o Sri Chhadami Singh, R/o Nagla Garhi hamlet of village Pegu, Pargana and Tahsil Shikohabad, Distt. Mainpuri, P. O. Pegu.
3. Sri Pratap Singh, S/o Balbhadra, R/o Vill. Pindasara, Pargana and Tahsil Shikohabad, Distt. Mainpuri, P. O. Bharol.
4. Sri Pancham Singh, R/o Vill. Gurau, Pargana and Tahsil Shikohabad, Distt. Mainpuri, P. O. Bhadan.
5. Sri Balbir Singh, S/o Sri Dammar Singh, R/o V. Nagla Bag hamlet of vill. Sarakh, Pargana and Tehsil Shikohabad, Distt. Mainpuri, P. O. Chandikara.
6. Sri Gulab Singh, R/o Vill. Sothra, Pargana and Tehsil Shikohabad, Distt. Mainpuri, P. O. Chandikara.

7. Sri Rasal Singh, S/o Sri Moti Lal, R/o Vill Jugnudi, at present residing in vill. Sirsaganj, Pargana and Tehsil Shikohabad, Distt. Mainpuri, P. O. Sirsagani.—*Petitioners.*

Versus

1. Sri Bansidas Dhangar, S/o Godey Lal, R/o Nagla Ramsunder hamlet of V. Jakhan, Pargana Jaswant Nagar, Tehsil and Distt. Etawah, at present residing in Sati Tola, Etawah City.
2. Sri Siya Ram Chaturvedi, S/o Sri Gahbar Singh, R/o Mohalla Chapatti, Mainpuri City and by profession a Lawyer.
3. Sri Madho Narain Mudgal, R/o Mainpuri City Co-operative Bank Building.
4. Sri Jaideo Singh, S/o Sri Kamta Singh R/o Vill. Bharaul, Pargana and Tahsil Shikohabad, Distt. Mainpuri.
5. Sri Anokhey Lal, S/o Karan Singh, R/o Vill. Ukhrend, Pargana and Tahsil Shikohabad, Distt. Mainpuri.
6. Sri Mulaim Singh, S/o Sri Hira Singh, R/o Vill. Gurau, Pargana and Tehsil Shikohabad, Distt. Mainpuri.
7. Sri Suraj Singh, R/o Urawar, Distt. Mainpuri.
8. Sri Jagdish Singh, S/o Sri Bholey Singh, R/o Nagla Bag hamlet of Vill. Sarakh, Pargana and Tehsil Shikohabad, Distt. Mainpuri.
9. Sri Sidh Gopal, S/o Sri Gahwar Singh, R/o Vill. Chandikara, Pargana Barnahal, Tehsil Karhal, Distt. Mainpuri.
10. Sri Ram Sewak, B.A., LL.B., Advocate, Mainpuri.—*Respondents.*

JUDGMENT

PER M. U. FARUQI, JUDICIAL MEMBER

The Petitioners are registered as voters in the electoral roll of Karhal-West-cum-Shikohabad East Constituency of the U. P. Legislative Assembly and the Respondents 1 to 10 were the duly nominated candidates for election to the said Assembly from the aforesaid Constituency. The Election was held in January 1952. As a result of counting of votes Bansī Das Dhangar, Respondent No. 1 (hereinafter to be referred to as the Respondent) was declared elected by the Returning Officer. Some of the rest were defeated or had withdrawn prior to the elections.

The petitioners filed this petition challenging the election on the grounds of extensive prevalence of undue influence, coercion and intimidation, bribery, false personification, procuring of vehicles for conveyance of electors to the polling stations on the polling day, employment on payment, of persons more than the permissible number, the obtaining of assistance of the Government servants, the filing of return of election expenses which was false in material particulars and the systematic appeal to vote made to the members of a particular caste on the basis of caste which materially affected result of the election. On these grounds the Petitioners prayed that the whole election should be declared void or, at any rate, election of the returned candidate should be declared void. The election petition was not exactly in the form envisaged under section 82 of the Representation of the People Act 1951 (hereinafter to be called the Act). The lists accompanying the petition proper were not verified but the same were made part of the petition proper in which reference of the same was made.

The Respondent denied all the charges that were made in the petition and further raised the usual pleas of vagueness and indefiniteness of the charges. He also pleaded that the petition was liable to be dismissed for want of proper verification of the petition proper and for absence of verification of the lists accompanying the petition.

Pleading of the parties gave rise to several issues which after proper amendment of the same finally emerged as follows:—

1. Are the original election petition and the list duly signed and verified according to law? If not, its effect?
2. Is the subsequent list reaching the Election Commission India on 3rd July 1952 duly signed and verified according to law? If not, its effect?
3. Is the subsequent list reaching the Election Commission India on 3rd July 1952 time barred? If so, its effect?
4. Is the election petition liable to be dismissed for not being accompanied by any valid list?

5. Are the allegations contained in paras 6(a) I to IV, 6(b), 7 I & II and paras 8 to 13 of the petition too vague and indefinite and do not comply with the provisions of Sec. 83(2)? If so, which of them and its effect?
- 6 (a). Is the election wholly void on the grounds alleged in para 6 of the petition as amended by the Tribunal?
- 6(b). Is the election of the Respondent No. 1 void on the ground alleged in para 13 of the petition?
7. Has the respondent no. 1 committed the corrupt practice of procuring, abating, or attempting to procure persons to personate as alleged in para 7(II)? If so, its effect?
8. Has the respondent no. 1 engaged workers, canvassers on payment more than the number permitted by law?
9. Is the return of Election expenses filed by respondent no. 1 incorrect and false as alleged in para 13 of the petition? If so, its effect?
10. Whether the corrupt practice as alleged in para 8 of the petition and list 3 was committed by the Respondent no. 1 or any of his agents? If so, with what effect?
11. To what relief is the petitioner entitled?

FINDINGS

Issues 1 to 4.—These issues related to preliminary points. Arguments were heard and these issues were decided at Faizabad when Sri D. N. Roy (now Mr. Justice Roy) was the Chairman. Majority of the members of the Tribunal was for maintainability of the petition and it decided all the four issues for the Petitioners. The majority decision is Annexure A(1) of this judgment and the dissentient decision is Annexure A(2). View of the majority prevailed and the case proceeded.

Issue 5.—After decision of the issues 1 to 4, this issue was taken up. The Tribunal decided not to throw out the petition on the ground of vagueness. It however, decided to disregard and treat as deleted such of the allegations contained in the petition as were found suffering from the defect of indefiniteness and vagueness. Consequent on the making of the order the parties adduced no evidence and addressed no arguments in respect of the deleted parts of the Petition and while discussing different issues in this Judgment I shall disregard the deleted allegations.

Issue 6(a).—Part (a) of issue 6 is about the extensive prevalence of undue influence in respect of which allegations are contained in paragraph 6 of the Petition proper and in List I which accompanies it. The Respondent is Gadaria by caste. Case of the Petitioners was that he issued two pamphlets and raised such slogans broadcast by means of loud speakers fitted to motor cars as amounted to causing undue influence in his favour on the electorate in general. It was further alleged that the other candidates also followed the foot steps of the Respondent with the result what voting took place on the basis of castes, the Gadarias and voters of the so-called low castes voting for the Respondent, the Thakurs for the Thakur candidate, the Ahirs for the Ahir candidate and so on.

Before entering into the truth of this allegation of fact, law on the point may be discussed. This allegation is based on the major corrupt practice defined in sub-section (2) of section 123 of the Act. Scope of the main part of the section is very wide but a proviso is added which illustrates as to what amounted to undue influence and what did not amount to it.

Admittedly clause (b) and clause (a) (ii) of the proviso did not apply to the facts of the present case. Clause (a) (i) relates to injury of any kind including expulsion from any caste or community. On this point evidence is scanty. Only some of the witnesses stated about the threat of ex-communication if the Gadarias did not vote for the Respondent. The evidence adduced on this point is definitely below the mark. It does not amount to proving the charge beyond reasonable doubt. Hence the allegation falls through. No injury of any other kind as is contemplated in the clause has either been alleged or proved. Thus, it is clear, the proviso does not help the Petitioners.

There remains the main question of interference in the free exercise of electoral rights. Contention of the Petitioners' side was that this major corrupt practice was resorted to by circulating two pamphlets and by raising communal slogans. The allegation of the raising of the communal slogans which was given at no. 3 in list I. was deleted by order of the Tribunal. Thus there remain only the two pamphlets which are Exts. P1 and P2. The Respondent admitted the

issuing of the pamphlet Ext. P2 but he flatly denied issuing of the other pamphlet. At this stage I am not going to enter in any detail into the question as to whether the Respondent issued the pamphlet Ext. P1 suffice it to say here that my view after careful consideration and scrutiny of evidence is that it was the Respondent who got the said pamphlet printed and that it was he who distributed the said pamphlet extensively among the Gadarias of his constituency during the days of election fight.

The pamphlet Ext. P2 is a very strongly worded document omitting venomous ideas likely to create hatred against the rich people particularly the so-called high caste Hindus. Inspite of all that my opinion after a careful perusal of the document is that it does not cause undue influence by causing interference in the free exercise of the electoral rights. This being so, the issuing of this pamphlet by the Respondent does not help the Petitioners.

As regards the pamphlet Ext. P1, it is addressed to the members of the Gadaria community. In that pamphlet the Gadarias were called upon to help, in all the possible ways, all the Gadarias candidates including the Respondent. Even if it be granted that the issuing and distribution of this pamphlet in his constituency by the Respondent was an attempt at causing interference in the free exercise of the electoral rights, it remains to be seen whether the aforesaid attempt had extensively prevailed during the election. All the electors in the Constituency were about 68000 out of whom, at the highest computation, there were only 5000 Gadaria voters i.e., about 7 or 8 per cent. An appeal to such a community does not in my view amount to extensive prevalence of undue influence. An attempt was made from the side of the Petitioners to prove that as a result of the issuing of this pamphlet other communities also started communal propaganda but evidence on this point is not such as might be held to prove the charge beyond reasonable doubt.

Therefore for the reasons given above I decide issue 6(a) in the negative.

Issue 6 (b).—This part of the issue is in respect of paragraph 13 of the petition which is as follows:—

“That there was a systematic appeal by the respondent no. 1 his agents and workers to electors of Gadaria caste to vote on the ground of caste for the respondent no. 1 belonging to the same caste. A large number of electors were led thereby to vote for the said respondent. Particulars of such appeals and of communities affected are given in Part VII of the list of particulars attached to the petition. Your petitioners assert that the majority in favour of respondent no. 1 has been procured by means of this corrupt practice and the result has been materially affected by this.”

List VII of the particulars referred to above is as follows:—

- “1. The pamphlet entitled ‘*Gadaria Bandhuon se appeal*’ was freely distributed and members of the Gadaria community were evidently affected by it.
2. The Respondent no. 1 also issued the pamphlet entitled ‘*Ap ke labh ki bat*’ extensively to the members of the alleged communities and excited hatred against the higher castes.
3. This was accentuated by the propagandas on loud speakers and individual canvassing by the respondent no. 1 and his agents and workers to the effect ‘Brahman, Thakur, Lala,

Inka kar deo munh kala

Aur inhe kardeo Desh Nikala”.

The above allegations relate to the minor corrupt practice defined in clause (5) of section 184 of the act relevant paragraph of which is as follows:—

“The systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion.....for the furtherance of the prospects of a candidate’s election”.

Commission of this corrupt practice by a successful candidate results in the avoidance of his election as is clear from sub-clause (1) of clause (2) of section 100 of the Act which is as follows:—

“If the Tribunal is of opinion that the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt or illegal practice, the Tribunal shall declare the election of the returned candidate to be void.”

The afore-mentioned corrupt practice which, for the sake of brevity, I shall call in this judgment as 'systematic appeal' has been newly introduced in the Act. Former election enactment of India had and, so far as I could ascertain, the election enactments of other democratic countries have no such corresponding provision. It is based on the general principle of freedom of the exercise of electoral right and is in line with the fundamental rights as defined in our Constitution. The necessity for introduction of this corrupt practice arose because of the ignorance of the people and the prevalence of caste system in our country. If voting is resorted to on the grounds of caste or religion etc. the whole edifice of democracy is bound to crash. Such a corrupt practice, in my view, should have been made a major corrupt practice. However, probably because of its 'newness' it is kept in the Act only as a minor corrupt practice. It is for the above reasons that there is yet very little case lay on the point and, therefore, for the proper understanding of the relevant provisions of the Act important words of the sub-clause cited above should be considered.

First question that arises in this connection is as to what is meant by 'systematic appeal' and what is the import and implication of the word 'systematic'. This word, obviously, is an adjective of the word 'system' about which the following from the Law Lexicon by Aiyar (1940 Edition):—

"The word 'system' is defined by the Encyclopaedic Dictionary as a plan or scheme according to which things are connected or combined into a whole; an assemblage of facts or of principles and conclusions, scientifically arranged or disposed according to certain mutual relations, so as to form a complete whole, as a system of philosophy, a system of government etc."

Some times 'system' and 'method' are thought to be synonyms but this is not so. There is fine distinction in the use of the two words as is explained in the following passage from the above cited book:—

'system' expresses more than 'method', which is but a part of system. System is an arrangement of many single or individual objects according to some given rule, so as to make them coalesce. 'Method' is the manner of this arrangement or the principle upon which this arrangement takes place. All sciences must be reduced to 'system'; and without system there is no science; all business requires method; and without method little can be done to any good purpose.

The above distinction needs proper appreciation because it will help in understanding the word 'systematic' which occurs in the relevant clause of section 124 of the Act. Word 'systematic' is explained thus in the Shorter Oxford English Dictionary, 1933 Edition:—

'Systematic' means arranged or conducted according to system, plan, or organised method; involving or observing a system (of a person) acting according to system, regular, methodical.

Further on the passage runs and it is important:—

'Qualifying nouns of unfavourable meaning. Regularly organised (for an evil purpose), or carried on as a regular (and reprehensible) practice.'

The object of the above discussion at some length is to show that word 'method' does not, in meaning, fully cover the word 'system'. 'System' means 'organised method'. In the relevant provision word 'systematic' qualifies 'appeal' which word, when considered with reference to context, connotes unfavourable meaning. Therefore, according to the passage cited above, 'systematic appeal' means 'regularly organised appeal'. The word 'systematic' or the phrase 'regularly organised method' does not, as will appear from the meanings given above, necessarily convey the idea of appeal to a large number of persons. Word 'appeal' means 'to make earnest request to a person to do a thing'. This word, again, does not convey any idea about the number of persons appealed. Thus 'systematic appeal' means 'the organised method to make earnest request to a person to do a thing' or

'systematic appeal to vote or refrain voting on ground of castes etc.'
means

'The making of earnest request to a person in an organised way to vote or refrain from voting on the ground of caste etc.'

It, therefore, follows that the corrupt practice of 'systematic appeal' must be held to have been committed even if only one person is earnestly requested in an organised way to vote or refrain from voting on the ground of caste etc. It is

not necessary for the completion of this offence that a large number of persons should be so requested. I should not be understood to mean that only if one person is requested, the result given in sub-clause (a) of clause (2) of section 100 of the Act would follow. That result can follow on completion of certain other ingredients as well. However, I have no doubt in mind that the corrupt practice of 'systematic appeal' as such will be complete even if only one person is requested to vote in the way indicated above.

Before I discuss the evidence on this point I may notice as to what is meant by the word 'community' which occurs in the relevant clause. Words 'caste', 'race' and 'religion' require no elucidation.

Word 'community' is explained in Webster's Dictionary (1926 Edition) as

'a body of people having common organisation or interest, or living in the same place under the same laws and regulations; as a community of monks'.

In Aiyar's Law Lexicon (1940 Edition) 'community' is explained in the same way as above as will appear from the following citation from that book:—

'Community; A Society or body of people living in the same place under the same laws and regulations and who have common rights and privileges.'

It is, therefore, clear that 'community' is not synonymous either with 'caste', 'race', or with 'religion'. Members of one community need not necessarily be of one religion or of one caste or of one race. Sometimes we talk of the Bengali community, the Punjabi community or the Gujrati community. In some of the foreign countries 'the Indian community' is used to indicate the group of Indians residing there. In these illustrations word 'community' is used, it is important to note, without any consideration of the status and position in society of the individual forming the 'community'. I shall again revert to this point while dealing with the pamphlet Ext P2.

To proceed with the evidence on the point under consideration, two pamphlets Ext P1 and P2 are to be considered and there is also oral evidence about the obnoxious slogan cited above which I am going to take up *seriatim*.

Pamphlet Ext P1.

This pamphlet has been referred to in lists I, VI and VII which accompany the petition. In list VI even name of the Press at which it was printed has been mentioned. The Respondent, in his written statement, merely denied contents of the relevant paragraphs of the petition and the lists and raised the plea that the allegations were vague and indefinite. It may be noted—and it is very important to note—that the written statement is totally silent in respect of the subsequently invented story that the said pamphlet was got printed by one Udai Bhan Singh Pal subsequent to the polling in the constituency in question. So the written statement of the Respondent does not say a word about the coming into existence of the pamphlet Ext P1. One of the objections of the Respondent against this pamphlet was that it was not filed along with the petition. But hollowness of this objection is clear from the fact that all the necessary details of the pamphlet and even the name of the Press at which it was printed have been given in the lists and because of all these details there could not remain any doubt in the mind of any one much less in the mind of the Respondent about the identity of the pamphlet. It is again important to note that not a word about the subsequently developed defence case was put to the witnesses of the Petitioners' side. Such important witnesses as Jai Deo Singh (P.W.2) and Mudgal (P.W.6) who were contesting candidates at the election, Raisal Singh (P.W.8) and Gulab Singh Arya (P.W.36) who are two of the Petitioners and last though most important of all Sia Rama Chaturvedi (P.W. 22) who is said to be the person who was responsible for the filing of this petition were not at all cross-examined in respect of the Respondents' subsequently developed case. The result of this entry by the back door was that the Petitioners had no opportunity to meet this part of the case. However, the cat was out of the bag when evidence of Respondent's side was started. By agreement of the parties Sri Badshah Gupta M.P. was examined on behalf of the Petitioners after some of the witnesses of the Respondent's side had been examined and the subsequently developed case of the Respondents had been for the first time revealed. Sri Badshah Gupta (P.W.52) stated on oath that he was shown the pamphlet Ext P1 during the election propaganda of the Respondent. He further stated that in order to counteract the communal propaganda carried on by the Respondent he got pamphlet Ext P15 issued.

The fact that the subsequently developed case of the Respondent was not mentioned in his written statement and the further fact that this case was not put to the Petitioner's witnesses were sufficient for dis-allowing the Respondent's evidence that has been produced on this point. That evidence, however, went on record. But, inspite of the recording of that evidence, the factum of non-disclosure of the case at the proper time is sufficient for discarding all the evidence that has been produced on this point by the Respondent. Even if that evidence is taken into consideration this part of the case of the Respondent does not improve at all. The case of the Respondent revealed at an inordinately late stage was that the pamphlet Ext P1 was got printed by Udai Bhan Singh Pal (R.W. 11) at Brahm Press, Etawah, that he placed order on January 3, 1952 and that he got delivery of the printed matter from the Press on January 25, 1952. Election in the constituency in question had taken place much earlier. The Respondent's object in attempting to prove this fact was to show that the distribution of the pamphlet Ext P1 was not possible during the election in question. The Respondent has not placed before us any definite case in the written statement. Therefore, it is not possible to examine the details of that case in the light of the evidence that has been produced before us. However, it is clear from the evidence produced before us that we are left to assume that when the Petitioners decided to file the Petition they also decided to falsely fasten the Respondent with the publication and distribution of the pamphlet Ext P1 which, in fact, according to the Respondent, was got printed by Udai Bhan Singh Pal who was a candidate from another constituency. Before dealing with the matter in any detail, I may point out certain glaring circumstances which speak for themselves. The Respondent is a resident of Etawah District. He had been teacher in some school there for considerably long time. He admittedly got pamphlet Ext P2 printed at the Brahm Press Etawah. Udai Bhan Singh Pal is resident of some village in Mainpuri District. He was a total stranger in Etawah when, according to him, he had gone there. He got some election literature printed at a Press in Mainpuri. It is much more probable that the Respondent got the pamphlet Ext P1 printed at the Brahm Press than Udai Bhan Singh Pal who, it is very improbable, in the thick of his election campaign would have left out several Presses of Mainpuri and would have undertaken a journey to Etawah where without special reason and without any previous plan he would have, by chance, reached the Brahm Press and would have placed an order for printing the leaflet Ext P1. In this connection a perusal of the statement of Udai Bhan Singh Pal would furnish interesting reading. He stumbled at several places during cross-examination and ultimately fell flat when he was confronted with his own return of election expenses. In that return he did not show the cost of the printing of the leaflet Ext P1 nor did he show therein the costs of his journey to Etawah. These facts speak for themselves and are more than enough, in my opinion, for throwing out the Respondent's subsequently invented story. If the evidence is probed into further in the light of circumstances, the hollowness of the Respondent's story will become manifest. According to the Respondent, the pamphlet Ext P1 was got printed by Udai Bhan Singh Pal; the Petitioners planned to fasten the said pamphlet falsely to the Respondent with that object in view the Petitioners would have at first approached the Proprietor of the Brahm Press who would have consented to forge the documents of his Press in order to prove the case of the Petitioners; the said proprietor named Mohanji or Mohan Misra was in the hands of the Petitioners till the date on which he came to Lucknow to give evidence. Had this not been so Mohanji would not have been summoned. If the Respondent's story is to be believed events should have taken place in the way indicated above. If this was so what happened that the duty or speaking the truth dawned upon Mohanji and he took an unexpected somersault by siding with the Respondent. Looking at the evidence in the light of glaring circumstances I am definite that the Respondent's story is totally false. It was not pleaded in the written statement. It was not put to the Petitioners' witnesses. It was wholly improbable that Udai Bhan Singh Pal would have gone to Etawah in preference to Mainpuri to get the pamphlet printed. It was more probable that the Respondent got the pamphlet printed at Press where his other pamphlet was got printed. Udai Bhan Singh's return of election expenses wholly falsifies his story. When the necessary links in the Respondent's story are critically considered it becomes unexplainable why Mohanji took the somersault and why he did not plainly state that he was approached by the Petitioners and that he had given them the assurance of forging his books in order to suit the Petitioners' case.

However, rejection of the Respondent's story does not end matters. It is to be considered how far the Petitioners have been successful in proving their case which was to the effect that the Respondent got the pamphlet Ext P1 printed at the Brahm Press Etawah and got the same distributed in the constituency during the election days. If the pamphlet was printed at the instance of the Respondent but was not distributed as alleged, he would not come within the clutches of the

alleged corrupt practice. Therefore, it is, first, to be considered if the Petitioners have been successful in proving the story of distribution.

Twenty witnesses of the Petitioners side have stated about the distribution of this pamphlet in the constituency during the election days:

- P.W. 1—*Ram Sanahi*—of Pairar Shahpur—a Dubay Brahman—formerly was Congressman—now of no party—attended two meetings addressed by the Respondent who also distributed leaflet Ext P1 there.
- P.W. 2—*Jai Deo Singh*—an Ahir by caste—contested the election as independent candidate but was defeated—is Respondent 4 in the case—attended meeting at Barnahal where the Respondent spoke and distributed pamphlet Ext P1.
- P.W. 3—*Sipahi Ram*—a Panday Brahman—Chairman Town Area Committee of Karhal—was not a voter but acted as Polling Agent of Sia Ram—attended meeting in which the Respondent spoke and distributed leaflet Ext P1.
- P.W. 4—*Rameshwar Dayal*—a Vaish by caste—Chairman Town Area Committee of Sirsaganj—is a Congressman—pays Rs. 10,000 as income-tax—heard the Respondent speaking at a meeting held in Mandi Rikaganj in which the Respondent spoke and distributed leaflet Ext P1.
- P.W. 5—*Sita Ram* of Sirsaganj—is Mathur Vaish by caste—pays Rs. 8,000 as income-tax of joint family—heard the Respondent speaking at 2 or 3 meetings held in Sirsaganj in which the leaflet Ext P1 was also distributed.
- P.W. 6—*Madho Narain Mudgal*—a practising lawyer of long standing—was President of the Distt. Board for sometime—belonged to the Congress-nominated for candidature by the Distt. Congress Committee—the Provincial Parliamentary Board selected Sia Ram in preference to Mudgal—latter appealed to Central Parliamentary Board but without success—revolted from Congress—stood as independent candidate—was defeated—subsequently applied for re-admission in Congress fold—heard the Respondent speaking at two meetings at Barnahal and Sirsaganj where leaflet Ext P1 was distributed.
- P.W. 9—*Parshotam Das* of Dhaurara—Brahmin—Congressman—used to pay Rs. 800 as land revenue—was polling agent of Sia Rama—heard the Respondent speaking where the leaflet Ext P1 was distributed.
- P.W. 14—*Om Prakash*—of Barnahal—Vaish by caste—old Congressman—was polling agent of Sia Ram—attended meetings in which the Respondent spoke and distributed leaflet Ext P1.
- P.W. 20—*Rama Dat* of Rahematullahpur—no-party man—attended meetings addressed by the Respondent where he distributed leaflets including the leaflet Ext P1.
- P.W. 22—*Sia Rama Chaturvedi*—defeated candidate—was set up by Congress—helped the Petitioners in the filing of the Petition—a practising lawyer of long standing—is an old Congressman. He described in detail what sort of propaganda was carried on by the Respondent—was subjected to the test of long and searching cross-examination. In my opinion he stood the test well. Though he is deeply interested in the success of the Petition, this circumstance does not belittle the evidentiary value of his testimony. On the whole that he stated appears to have been said with frankness and there is very little in his statement which may lead to the conclusion that he tried to suppress the truth. He could have stated without fear of contradiction that he saw the Respondent distributing the leaflet Ext P1 but he stated that he got the leaflet during election days from others. Similarly had he been disposed to mix lies, he could have safely asserted or would have suppressed certain facts. He, however, did not do so. This is true that, as he is deeply interested in the success of the Petition, his statement should be accepted after scrutiny. After seeing him in the witness box, after hearing and perusing his statement and after its scrutiny, my conclusion is that there is sufficient material in his statement which, there would be no justification to discard.

- P.W. 27—*Tarlok Singh*—*Dhakray Thakur* by caste—*Pradhan* of *Gram Sabha Galpura*—described meetings addressed by the Respondent—leaflet Ext P1 was distributed—the witness read out the leaflet to others.
- P.W. 32—*Kanhai Singh* of *Chiruali*—*Dhakray Thakur* by caste—is teacher in *Distt. Board school*—heard the respondent and his men speaking. Leaflet Ext P1 was distributed which was brought to the witness by his pupils. He read the same.
- P.W. 33—*Kateh Singh* of *Nagia Garhi*—*Jadaon Thakur* by caste—runs *Kirana shop* at *Sirsaganj*—is *Adalti Panch* of *Paigu*—was *Polling Agent* of *Molaim Singh* a defeated candidate—attended several meetings—heard and saw the propaganda of the Respondent—he saw the leaflet Ext P1 being distributed.
- P.W. 35 *Rustam Singh* of *Sirsaganj*—*Jadaon Thakur* by caste—*Vice-Chairman Town Area Committee* of *Sirsaganj*—attended meetings held by the Respondent where leaflet Ext P1 was distributed.
- P.W. 36 *Gulab Singh Arya* of *Sothra*—*Pradhan* of *Arya Samaj* of *Sothra*—no-party man—attended good many meetings addressed by the Respondent where communal propaganda was carried on and leaflet Ext. P1 was distributed—is one of the Petitioners.
- P.W. 45 *Ajodhya Prasad* of *Keshopur*—*President* of *Gram Sabha*—no-party man—stated about meetings held by the Respondent where the latter spoke on communal lines and distributed leaflet Ext P1.
- P.W. 50 *Bharat Singh* of *Ukhraind*—No-party man but worked for Congress on the election day—heard the Respondent speaking at meetings on communal lines and saw the leaflet Ext P1 being distributed.
- P.W. 52—*Badshah Gupta*—He is an M.P.—During the election days he heard of the communal propaganda carried on by the Respondent—leaflet Ext P1 was also shown to him—he thought it necessary to counter-act this propaganda—he got the leaflet Ext P15 issued by the Congress for that purpose—important witness.

These twenty witnesses form one group. They stated about the communal propaganda carried on by the Respondent. These witnesses belong to different castes come from different villages and some of them are men of status in society. All were subjected to searching cross-examination and they stood the test well. It is not possible to discard their testimony on flimsy grounds. Some of these witnesses are very old Congressmen. The Respondent wants us to discard all that evidence on the only ground that *Sia Ram Chaturvedi* the defeated candidate who was set up by the Congress to contest the election was deeply interested in the success of the petition, that, as *Sia Ram* being a Congressman was interested in the success of the Petition. All the witnesses who are Congressmen should be treated as interested witnesses and should be disbelieved. So far as I am concerned I am not prepared to accept this line of approach. *Sia Ram* is, no doubt, interested in the success of the petition. There may be two reasons for interest. Either he believes the allegations of the petitioners to be true and therefore he is interested in the success of the petition or he is so interested because he was defeated by the Respondent. In the first alternative nothing can be said if he takes interest while in the second alternative his testimony should be accepted after careful scrutiny. It may, however, be noted that *Sia Ram* is not one of the Petitioners though some of his relations are. In any case interest of *Sia Ram* cannot be fastened to the Congress and other Congressmen, who came in the witness box, should not be disbelieved merely on the ground that *Sia Ram* a Congressman was interested in the success of the Petition. It may be noted that there is no evidence on the record to show that the Petition was sponsored by the Congress party. The proved facts also bring me to the same conclusion. If the Congress as a party had been interested in the Petition the same would have been filed by *Sia Ram* himself and not by seven persons who were registered as electors in the constituency in question. This being so I am not at all prepared to give a short shrift to those witnesses of the Petitioners who were Congressmen merely on that ground.

Short notes of the evidence of the relevant witnesses given above show that the evidence on the point is such as it is impossible to discard. *Mudgal*, *Badshah Gupta*, office bearers of the Town Area Committees, *Pradhans* of *Gaon Sabhas*, those who were big zamindars and those who pay large sums of land revenue and last though not least of all *Sia Ram* himself came in the witness box. I am fully convinced from the evidence of these witnesses that the leaflet Ext. P1 was

in existence and was extensively distributed by the Respondent and his men among the Gadarias of the Constituency during the days of election campaign.

When it is proved beyond any shadow of doubt that the pamphlet Ext. P1 was extensively distributed among the Gadarias of the Constituency during election days and that the Respondent himself on good many occasions distributed that leaflet and his workers and agents on other occasions distributed the same in the knowledge of the Respondent, it becomes unnecessary to see whether the Respondent got the leaflet printed. But, as evidence has been led on this point as well, I proceed to deal with it briefly. I believe the evidence of the Petitioners' side produced on this point not only because of the satisfactory nature of the evidence but also because the glaring circumstances of the case noticed above clearly speak of the truth of the Petitioners' version.

The witnesses of the Petitioners' side about the printing of the leaflet Ext. P1 are Pandit Sia Ram (P.W. 22), Dularay Lal Panday (P.W. 40), Ajodhya Prasad (P.W. 44) and Surendra Singh (P.W. 47). From the side of the Respondent, Mohanji or Mohan Misra (R.W. 1), Udai Bhan Pal (R.W. 11) and the Respondent himself (R.W. 42) were examined as witnesses on this point. I have already discussed the Respondent's evidence on this point. I have found that that version is a belated and unsuccessful attempt at side-tracking the issue. The said version is a delayed invention and is totally false on the face of it.

Primary evidence of the printing of the leaflet Ext. P1 at the instance of the Respondent was the Press records and the evidence of the proprietor but the latter was won over and the former were suppressed, altered and forged hence secondary evidence was given. While dealing with this point the evidence shall be considered in two aspects—first, whether it was not possible under the circumstances of the case, for the Petitioners to produce primary evidence and if it was beyond their control to produce primary evidence whether the secondary evidence produced was upto the mark and whether it proves the printing of the leaflet at the instance of the Respondent. For consideration of these points following facts are to be kept in view because from these proved facts it will be possible, without any exercise of imagination, speculation or surmise, to infer that the version of the Petitioners was true.

As shown above the pamphlet Ext. P1 was extensively distributed among the Gadarias in the constituency during the election days. Two kinds of these pamphlets were distributed. In the beginning of the election campaign the leaflet distributed had no press line. In December 1951 the same leaflet but with press line began to be distributed. This distribution lasted almost upto the election day. As a result of counting the Respondent was successful. Electors of the constituency were shocked to know of the result because of the intense communal propaganda which had brought about the result. Some of the Congressmen and some others of independent thinking decided to undo the wrong. They were, without doubt, helped in this matter by Sia Ram Chaturvedi the defeated candidate who had been set up by the Congress party. The filing of an election petition was decided upon. An experienced legal practitioner as he was Sia Ram advised that necessary material should be collected before filing the petition. The commission of the corrupt practice of systematic appeal was one of the grounds which was to be taken in the petition. It is clear from the pamphlet Ext. P1 that the same was printed at the Brahm Press Etawah. To know the facts and to collect material Sia Ram and others went to the said press and met the proprietor Mohan Misra. The latter told Sia Ram and others that the said pamphlet was printed in his press at the instance of the Respondent. He also showed them, on request, the day book which is locally known as *Satti Bahi* in which entry dated December 5, 1951 was that the Respondent paid Rs. 10 and odd on that day as charges for the printing of the leaflet Ext. P1. After collecting necessary material and after ascertaining the aforesaid facts the petition was filed on May 17, 1952. After passing through preliminary stages the Petition ultimately came up for hearing. Prior to the date of hearing Shoo Dat one of the Petitioners took *dasti* summons for Mohan Misra the proprietor of the press. He reached Etawah on August 16, 1953 but could not meet Mohan Misra. He, however, left message that he and others would be passing Etawah by the night train. On return to his house Mohan Misra was informed of the message. He went to the railway station and met Sia Ram and Shoo Dat who were going to Lucknow. He promised to meet them at Lucknow on August 18, 1953. Before proceeding further with the course of events, I may pause here for a moment.

If the Respondent's story is true, Mohan Misra would have assured Sia Ram and others that, inspite of the truth being otherwise, he would depose for the Petitioners and that in support of his statement he would produce forged books

of the press. Had this assurance not been there the Petitioners would not have, under any circumstances, summoned Mohan Misra and also his account book of the press. This is a necessary inference if the Respondent's version is to be accepted. But neither Mohan Misra nor the Respondent say so in their evidence. They made no attempt to supply this link of story. They had to be silent on this point because they feared that this link if supplied would reflect adversely on the veracity of Mohan Misra. At the time of argument it was said from the side of the Respondent that, though the Petitioners had conspired to fasten the Respondent with the responsibility of getting the pamphlet Ext. P1 printed which was in fact printed at the instance of Uday Bhan Singh Pal, they made no attempt to see the records of the Press and they took it for granted that Mohan Misra would depose for them. Hollowness of this line of argument is apparent on the face of it. Therefore, it is clear from the facts given above that the evidence of the Petitioners' side must be believed. It is consistent, probable and explains every link of the story.

To proceed further with the course of events, on August 17, 1953 some of the Petitioners evidence was recorded before us. On August 18, 1953 Mohan Misra came to Lucknow but without the *Satti Bahi*, which, he informed Sia Ram was at Etawah. He promised to bring that book and other papers on another date. This attitude of Mohan Misra put the Petitioners on guard. Sia Ram and Sheo Dutt went to Etawah on August 21, 1953 and met Mohan Misra who showed them the *Satti Bahi* from which the relevant leaf was found torn away and the printed leaflet without the press name which was shown to them to previous occasion was said to be missing. It is not known when the Respondent had contacted Mohan Misra and won him over. It is possible as was hinted at one stage that the Respondent successfully contacted one of the servants of the press and got the relevant leaf of the account book of the press torn away and also got the copy of the leaflet Ext. P1 without press name destroyed through the same agency. Mohan Misra was perhaps not in the know of this. He came to know of it for the first time when he prepared himself for going to Lucknow for giving evidence. Admittedly the Respondent met Mohan Misra on August 23, 1953 at his house. The Respondent's version that on that occasion Mohan Misra refused to give him any information cannot be believed. Fact of the matter seems to be that the Respondent tried successfully to win over Mohan Misra who, finding that a servant of his press would be taken to task and, may be, for some other reason as well, succumbed to the persuasion of the Respondent and agreed to take the somersault. It was then, after meeting the Respondent, that Mohan Misra wrote the post card which was shown to Mohan Misra during his cross-examination to Dularay Lal Panday (P.W. 40). The facts given above are proved from the statements of Sia Ram (P.W. 22) and Dularay Lal Panday (P.W. 40). The latter witness is closely related to Mohan Misra and his statement cannot be brushed aside merely by saying that formerly he was a Reader in collectorate and would have been on friendly terms with Sia Ram who was a practising lawyer. Mohan Misra when in the witness box produced several books of his press. Those books are of doubtful authenticity as will appear from the perusal of those books and from the cross-examination of Mohan Misra himself. I gave my most anxious consideration to the whole matter and I am fully convinced that the *Satti Bahi* containing the relevant entry has been withheld by Mohan Misra, and that he gave a totally false statement when he stated that he did not print the leaflet Ext. P1 at the instance of the Respondent and therefore the petitioners were perfectly justified in producing secondary evidence about the printing of the leaflet Ext. P1 at Brahm Press at the instance of the Respondent.

Besides the evidence already noticed two witnesses were produced from the side of the Petitioners to prove their allegation. They are Ajodhya Prasad (P.W. 44) and Surendra Singh (P.W. 47). Both of them are from Etawah. The former is a friend of the latter. The latter is a graduate and is a well-to-do person. Before the Zamindari Abolition he used to pay Rs. 10,000 as land revenue. He stood for the Legislative Assembly from Etawah. At first he stood as independent candidate but later on joined the Jan Sangh Party. Mohan Misra was his supporter and worker. He is a man of status and lives not far from the Brahm Press. In connection with the printing of his own election literature he had to visit the Brahm Press. On two of such visits the Respondent was also there and he placed order for the printing of the pamphlet Ext. P1. Ajodhya Prasad was also with him on those occasions. Both these witnesses were subjected to searching cross-examination. They stood the test well. I entertain no doubt about the veracity of these witnesses both of whom are disinterested and independent persons. The Respondent could not even attribute any ulterior motive to these witnesses for their coming in the witness box.

Thus it is proved that the Respondent got the leaflet Ext. P1 printed at Brahm Press and that he got the same distributed extensively among the Gadarias of his constituency during election days.

It remains to be found whether the distribution of the leaflet Ext P1 in the manner indicated above amounted to a 'systematic appeal' within the meaning of sub-clause (5) of section 124 of the Act. Words 'systematic', 'appeal' and 'community' have been explained and interpreted above. During the course of arguments the leaflet Ext. P1 was read over to us. It contains an appeal to the Gadarias to help the Gadaria, candidates including the respondent with money by doing canvassing work on behalf of the candidates, by supplying them with vehicles and by helping them in every other day. The actual relevant passage is as follows:—

"To ham biradri kay bhaiyon ka bhi mahan kartavya ho jata ha ki sabhi sambhav sadhan jutakar in ranchhetra men utray hue veeron ki tan, man, dhan sabhi prakar se sahayata karne men koi bat utha na rakhen kyonki "phir pachhitae hot ka, jab chiriya chug gai khet", yeh sunahra maoka ham logon ki aymayash ka bahut dino bad aya ha."

The passage contains a very earnest though strongly and persuasively worded request made to the members of the Gadaria community to help the Gadaria candidates including the Respondent in every possible way. This is true that appeal to the Gadarias to vote for the Respondent on the ground of being Gadaria is not given in clear terms. But we are to look to the substance rather than to the form. In my judgment there cannot be two opinions about the fact that the appeal is addressed to the Gadaria voters as much to voter for the Gadaria candidates including the Respondent as to ask them for help of every kind. It was with this object that the leaflet Ext. P1 was extensively distributed among the Gadarias in different villages and market places and also repeatedly during the election days. If it is insisted that appeal to vote should be direct and in clear and unequivocal terms and that inferential evidence should not be taken into consideration, clever persons will always be successful in circumventing the provisions of law. They would make systematic appeal affectively and with full force but would be safe from the clutches of law because the appeal would not be in clear terms. Law courts always, under such circumstances as in this case, look to the substance. If a perusal of the whole document brings the same within the clutches of clause (5) of section 124, it is immaterial whether appeal to vote is made in clear terms or by implication. Effect of the distribution of the leaflet Ext. P1 on the mind of the Gadaria voters would have been the same as indicated above. They would, after reading the document, have concluded that they were earnestly requested to help in every possible way including the casting of votes.

The view that I have taken about the interpretation of clause (5) of Section 124 of the Act and also about inference to be drawn from the document Ext. P1 finds support from the decision of other Tribunals. As pointed out above, the 'systematic appeal' has been made a corrupt practice only in the Act. Hence case law is scanty. I, however, came across some cases. One of such cases which, in substance, is on all fours with the present case is, *Sardar Sardul Singh Caveeshar vs. Sardar Hukam Singh and others*—Election Petition No. 268 of 1952—published in the *Gazette of India Extraordinary*, dated May 28, 1953, Part II Section 3 page 1743 decided unanimously by the Patiala Tribunal of which our learned Chairman Sri Raghunandan Saran was one of the Members. In that case articles and news items were published on different dates in certain newspapers. The relevant passages are given in paragraphs 24 and 25 of the judgment and in paragraph 28 objectionable passages are given as (vi) and (vii) of para. 24 and (a) to (f) of para. 25. The different passages were not in the same words and in some appeal to vote was read into the passages by implication. On this point the Tribunal made the following observations:—

"The repetition in effect if not in the same words of the offending statement over and over again (as is evident from the different issues of the papers in which they appear) amounts in our view to a systematic appeal. Though the appeal to vote or refrain from voting may have to be read into the passages by implication where it is not expressly made, there may be no doubt about such request for vote being earnest in character which is an essential of appeal according to the dictionary meaning of the word."

It is, therefore, clear that request to vote made indirectly or by implication would not save the Respondent from the responsibility.

What remains now to be considered is whether the appeal was systematic. The last-mentioned word means 'organised method' or 'organised way'. As held in the afore-cited case, if the appeal was repeated again and again it would be considered as made in an organised way. The leaflet in question is copy of an appeal published in a monthly journal issued from Kanpur purpose of which journal is the uplift and organisation of the Gadarias. That article was, at first, got printed in the shape of a separate leaflet. It was without the Press Line and was distributed among the Gadarias of the constituency. In the beginning of December the same leaflet was got printed with press line. It was printed at the Brahm Press. As shown above it was extensively distributed among the Gadarias in different villages and market places. This circumstance is more than sufficient for holding that the appeal (earnest request) was made in an organised way i.e., the appeal was systematic.

Therefore, in view of what is said above, my definite finding is that the Respondent got the leaflet Ext P1 printed, that he distributed it extensively among the Gadarias of the constituency during the days of his election campaign, that in the said leaflet the Gadarias were appealed to help the Gadaria candidates including the Respondent in every possible way including the casting of votes, and that such distribution amounted to the commission of the corrupt practice as mentioned in clause (5) of section 124 of the Act.

Leaflet Ext. P2.

This leaflet was admittedly got printed and distributed by the Respondent. The only question to be considered is whether its distribution amounted to the corrupt practice mentioned above; or, to be more exact, whether the appeal was made 'on the ground of caste, race, community or religion'. A perusal of the leaflet in question shows that this appeal was obviously not on the ground of caste, race and religion. Therefore if it is found that the appeal was made on the ground of 'community', it will amount to the corrupt practice of 'systematic appeal'. I have given above the dictionary meaning of the word 'community'. 'A body of people having common interest' is called community. So, if a body of people believe that they were exploited by another body of people and that they should free themselves from the imposed exploitation, they will be said to have common interest and therefore they would be said to form a community.

The leaflet Ext. P2 purports to have been signed by good many persons. Some of the so-called signatories disowned their signatures and some appeared to have signed it without knowing the contents. I am, however, not concerned with that matter at present. Granting for the moment that the so-called signatories actually signed the document, they consist of agriculturists, petty businessmen and low paid servants. They say that the big men and big zamindars were looting them and that they should combine themselves against them. This is true that the freedom of speech and the freedom of expression of opinion is guaranteed under the Constitution to every citizen but that guarantee also has its limitations. If, the electors are earnestly requested repeatedly and in an organised form to vote or to refrain from voting on the ground of community by a candidate or his agents for the furtherance of the prospect of the Respondent's election the latter would be said to have committed the corrupt practice of 'systematic appeal' as defined in clause (5) of Section 124 of the Act. Addressing the persons mentioned above who are collectively termed in the leaflet as 'Kameray Bhai' (workers) it is said:—

'Play your game saving yourself from big men and big zamindars. Do not under any case give them your valuable vote. They have been sucking your blood from hundreds of years. Their threats have enjoyed the taste of your bones. Their faces are red with your blood. Their hands are coloured with your blood. Apparently they look decent and sweet-tongued but are for us black hearted. For us they work as poison in a golden jar. We, the poor, have tested them several times and each time we were deceived by them. Now, we have no hope from them.'

Further on the leaflet contains an appeal to vote for the Respondent on the ground, *inter alia*, of his being of the same community as themselves. It is, therefore, manifest that the leaflet, besides being full of sweeping and irresponsible generalisations sure to create hatred among the members of a particular class against another class, is without doubt an earnest request made repeatedly and in an.

organised way to vote for the Respondent and to refrain from voting for the big men and big zamindars and this earnest request was made for the furtherance of the prospects of the Respondent's election. My conclusion, therefore is, that the Respondent was guilty of the corrupt practice of systematic appeal as defined in clause (5) of section 124 of the Act on this ground as well.

It was urged that the appeal contained in the leaflet Ext. P2 was an appeal to those who are called 'masses' against those who may be termed as 'classes' or, in other words, it was an appeal by the 'workers' against the 'capitalist' or by the 'exploited' against the 'exploiters'. This may be so. We are, however, not concerned with the aforesaid different terms which point to different political or economic ideologies. What we are concerned with is as to whether the distribution of this leaflet amounted to a systematic appeal made on the ground of community. I have shown above that those who are said to have issued this appeal as also the Respondent and good many electors formed a community because they were 'a body of people having common interest' therefore, their systematic appeal must be construed to have been made on the ground of 'community'. This being so, the distribution of this leaflet also brings the Respondent within the clutches of clause (5) of section 124 of the Act.

Before I close I may refer to a decision of the Bombay Tribunal in the matter of Election Petition No. 76 of 1952—Moinuddin Vs. Bhawani Shankar and others—published in the Gazette of India Extraordinary, dated January 27, 1953 Part II Section 3. In that case it was alleged by the petitioner that it was falsely broadcast by the respondent of that case that the petitioner and his party (Socialist) were opposed to Islam in as much as they opposed teaching of the Koran to the Muslims in the Municipal Schools. In this decision the law relating to the 'systematic appeal' was discussed at length with reference to the different articles of the Constitution. Words 'on the grounds of religion' as used in clause (5) of Section 124 of the Act were explained and the Tribunal came to the conclusion that these words should be given restricted meaning. But in the Patiala case referred to above the same matter came up for consideration. In the latter case the tussle was between the Akali Party and the Congress Party. In that case also the question of the interpretation of the words 'on the ground of religion' arose. The Tribunal made the following observations in para. 31 of the Judgment about the Bombay decision referred to above:—

'We agree with the view of the Bombay Election Tribunal in Moinuddin Vs. Bhawani Shankar—that in determining the scope of Section 124(5) we should have regard to Articles 13, 19(1)(a), 25(1) and 29(1) of the Constitution, but do not think that in consonance with those provisions of the Constitution the scope of the Section is narrowed down to prohibition or attacks on a particular religion or on a candidate only on the ground that he is a follower of a particular religion. The wider scope of the words in Section 124(5) which prohibits all kinds of appeals for vote in the name of religion, whether it is the religion of the electorate or of the candidate, would be quite in keeping with the power of the State to make law restricting of the freedom of speech and expression "in the interest of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to offence", which is now conferred by the amended articles 19(2) of the Constitution.'

I gave my careful and anxious consideration to the two decisions referred to above with reference to the relevant articles of the Constitution. My conclusion is that I respectfully differ from the view taken in the Bombay case so far as it narrows down scope of clause (5) of Section 124 of the Act and agree with the view of the Patiala Tribunal which gives natural and plain meaning to the words in question. In my judgment the different articles of the Constitution do not at all narrow down or limit the scope of the provision in question.

Slogans and Speeches

The third item in list VII of the Petition is to the effect that communal propaganda was resorted to by the Respondent and his supporters and the slogan:

"Brahman, Thakur, Lala,
inka kar deo munh kala aur
inka kar deo desh nikala."

(Blacken the faces of the Brahmins, the Thakurs and the Lalas and banish them from the country).

Modus operandi of the Respondent was this. He used to visit villages and specially the market places on the market days. He used to go on a motor truck which he had purchased for the election purposes. The truck was fitted with loud speaker. On reaching the villages and market places he and his workers, at first, used to sing the above slogans. This used to attract people in large numbers because of the unusual visit of the motor vehicle in a village, because of the use of loud speaker and also because of the novel and hate-creating slogan. This done, people assembled. They were addressed by the Respondent and his men on communal lines and the leaflets Ext. P1 and P2 were distributed among those who were likely to be influenced by the contents thereof. All the twenty witnesses named above and some more have deposed about this way of propaganda carried on by the Respondent and his men. The question is whether the uttering of the above slogan constituted an appeal to vote on the ground of community. The Respondent tapped every nefarious source to gain his object of catching votes. He appealed to the voters of his own caste to vote for him by issuing the leaflet Ext. P1. He appealed to the so-called low caste people to vote for the Respondent who belonged to one of the so-called low castes and to refrain from voting for the Brahmins, Thakurs and Lalas to which castes his opponents belonged, by uttering the afore-cited slogans. He appealed to the 'Kamray Bhais' (workers) consisting of small agriculturists, petty businessmen and traders and low paid servants to vote for him on the ground that he was one of them. By this sort of extensive propaganda the Respondent tried to capture as many voters for him as were possible under the circumstances. My conclusion is that the uttering of the above slogans by the Respondent and his men was propaganda on communal lines and was carried on in the furtherance of the prospect of the Respondent's election and, therefore, on this ground as well the Respondent was guilty of the corrupt practice given in clause (5) of Section 124 of the Act.

Thus all the three charges of the commission of the corrupt practice are proved against the Respondent.

Next question that arises for consideration is whether the commission of the aforesaid corrupt practice results in the avoidance of the election of the Respondent. This brings me to the provisions of Section 100(1)(a) of the Act which is as follows:—

'If the Tribunal is of opinion that the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt or illegal practice, the Tribunal shall declare the election of the returned candidate to be void.'

This provision enumerates three grounds for avoidance of election which are as follows:—

- (1) Procuring of election by a corrupt or illegal practice; or
- (2) Inducing of election by a corrupt or illegal practice; or
- (3) Affecting materially the result of the election by a corrupt or illegal practice.

It is alleged in paragraph 13 of the Petition that

'your petitioners assert that the majority in favour of Respondent No. 1 has been procured by means of this corrupt practice (systematic appeal) and the result has been materially affected by this.'

Therefore, it is to be seen whether the Petitioners have been successful in proving that the success of the Respondent was procured by this corrupt practice and that the result of the election was materially affected thereby. 'Procuring of election by corrupt practice' and 'any corrupt practice materially affecting the result of the election' almost overlap each other in meaning so far, at least, as the facts of this case are concerned. The last-mentioned phrase was subject matter of interpretation in the past. The first question that arises in this connection is of the burden of proof. In such cases it is for the Petitioners to prove by positive evidence that the result of election was materially affected by the proved corrupt practice. Words 'materially affected' and 'result of the election' were

subject matter of interpretation in *Ganesh Krishna Vs. Nandeva Rao* (Ahmadnagar District II-H.R. 1926) reported in *Jagat Narain* Vol. III, page 180 at 183 and also in *S. Abdul Razak Sahib Bahadur Vs. Haji Mohd. Ismail Sahib Bahadur* (Bellary Mohammad Rural Constituency 1947) reported in *Sen and Poddar* page 135. 'The result of the election' means the names of the candidates in the order of the poll with the number of votes polled for each; and 'materially affected' means that the majority of the returned candidate would have been materially reduced. In the present case though it is positively proved that communal propaganda was carried on at an extensive scale but there is no definite evidence about its effect. Everything has been left to mere surmise and speculation. The Respondent got 8,605 votes. It is not known and in fact it cannot be known as to who voted for him. It is quite possible that the majority of the Respondent's votes might have been reduced if the afordescribed communal propaganda had not prevailed extensively but this remains merely a possibility. This cannot be asserted, owing to lack of evidence, with definiteness and positively. In this view of the matter I find that the Petitioners failed to prove by positive evidence that the success was procured owing to the corrupt practice of 'systematic appeal' having been practised by the Respondent and they also failed to prove that the result of the election was materially affected by the commission of this corrupt practice.

Therefore issue 6(b) is decided in the negative.

Issue No. 7.—This issue relates to personation which is a major corrupt practice under clause (3) of Section 123 of the Act. It is based on paragraph 7(ii) of the Petition which is accompanied by list II. That list consists of eleven cases of personation. Two of such cases were deleted under orders of the Tribunal at a previous stage of the proceedings. Out of the remaining nine instances arguments were confined only to three the rest having been abandoned. The instances that finally remained were of the personation of Rustam given at No. 5, of Jhalwa given at No. 9, and of Birbal given at No. 10 of the list. I proceed to deal with each of the three instances.

Rustam.—The Petitioners' allegation was that Rustam son of Sukh Lal Gadaria of Shakhupur had been dead. Gopal his brother personated him and cast vote at the instance of Brahmjit who was worker and agent of the Respondent.

The Respondent admits that Rustam had been dead at the time of election and somebody cast vote for him. Rest is not admitted. Therefore the questions that remain for decision are

- (i) if Gopal voted for Rustam;
- (ii) if he voted at the instance of Brahmjit; and
- (iii) if Brahmjit was worker and agent of the Respondent.

To prove their allegations the Petitioners produced three witnesses, namely, Sonay Lal son of Moolay, Teli of village Ghurai Tikar (P.W. 49), Bharat Singh Thakur of Ukhrain (P.W. 50) and Sonay Lal Brahman of Ukhrain (P.W. 51). Sonay Lal Teli (P.W. 49) stated that he saw Gopal or Rama Gopal obtaining ballot paper of and voting for Rustam. He is the only eye-witness of the alleged occurrence. The second Sonay Lal (P.W. 51) stated that Rama Gopal himself told him of personation and Bharat Singh stated that Sonay Lal (P.W. 51) had informed him about this occurrence. Thus there remains only the version of the first Sonay Lal (P.W. 49) which can be said to be primary evidence of the occurrence.

From the side of the Respondent Rama Gopal (R.W. 16) and Brahmjit (R.W. 22) were produced. The latter denied having played the part that was attributed to him whereas Rama Gopal flatly denied having personated his brother Rustam.

Sonay Lal (P.W. 49) the eye-witness is an ordinary illiterate village witness. Moreover he was summoned at a late stage of the proceedings. Therefore it cannot be said with definiteness that the events took place in the way alleged from the side of the Petitioners. The matter is doubtful and benefit of doubt must go to the Respondent. Rama Gopal's personation of Rustam has not been proved satisfactorily. This plea of personation stands rejected.

Jhalwa.—The Petitioner's allegation was that Jhalwa Kumhar of Keshopur was a voter but he did not vote. In his place his son Sarman cast vote at the instance of Sri Rama who was worker of the Respondent. Case of the Respondent was that Jhalwa himself cast his vote.

It appears from the election records that the voting had taken place in the following order:—

Name of voter	Serial number in the Electoral Roll.	Serial number of ballot paper	Whether produced as witness.
Sat Rama	879	4586	P. W. 46
Sukh Deo	878	4587	P. W. 43
Jhalwa	477	4588	R. W. 26
Bhajnoo	607	4589	Not produced.

The above table shows that Sat Rama was the first to vote. He was followed by Sukh Deo who was followed by the person who voted for Jhalwa. One is led to think that the evidence of these witnesses should carry weight but this is not so. Inspection of the election records in this office was made from the side of the Petitioners on April 20 and 24, 1953 whereas names of these witnesses were given for the first time in the list of witnesses dated September 16, 1953. Thus the inference drawn from the serial number of the ballot papers is minimised or negatived by the possible inference that can be drawn from the dates of inspection of the record and of the disclosure of the names of the witnesses. It can be said that the witnesses were hunted out after inspection of the record. If the matter had been in the knowledge of the Petitioners they would have disclosed the names in the first list of witnesses which was filed on April 25, 1953, or in the following lists which were filed on August 12 and 22 and September 2, 1953 respectively. Similarly Deputy Lal (P.W. 11) and Ajyodhya Prasad (P.W. 45) who were also witnesses of this fact were named for the first time in the list filed on August 12, 1953. If names of these witnesses were known to the Petitioners the same should have been disclosed in the first list of witnesses filed on April 25, 1953. Argument of the Petitioners' side was two fold in this connection—first that the disclosure of name in the very beginning would have given the Respondent opportunity of winning over the witnesses as was done in the case of Mohan Misra and secondly that even if it be granted that the Petitioners got the names only after inspection, it did not in any way necessarily lead to the conclusion that the evidence was manufactured. This is true so far as it goes. There is, however, one very strong circumstance which cannot be left out of consideration. Jhalwa, when he came in the witness box from the side of the Respondent, no doubt, made a mess of the whole affair. His description of the manner in which he cast his vote is totally incorrect. If the statement of Jhalwa is read along with the statement of the Petitioners' witnesses and if those statements are considered comparatively the Petitioners' story appears more likely but the fact remains that Jhalwa is the main person concerned. He stated on oath that he himself cast his vote.* No satisfactory reason is shown as to why Jhalwa decided to side with the Respondent and to make a false statement. He is an old man and is almost blind. This may be the reason why he gave incorrect description of the manner of voting. My conclusion, therefore, is that Jhalwa's false personation is not proved to the hilt.

Birbal.—This point relates to item No. 10 of List II which is as follows:—

'Birbal son of Manohar resident of Nagla Dularai hamlet of Rahematullahpur was not present on the day of polling. Somebody cast his vote for the Respondent No. 1.'

This allegation is wanting in two matters—first name of the person who personated has not been given and secondly it is not alleged that the Respondent or his agents had anything to do with this affair. During the course of recording of evidence it was disclosed that another Birbal of Balpura voted for Birbal of Nagla Dularai and that he did so at the instance of Chedu Gadaria who was agent and worker of the Respondent. The Petitioners should not have been permitted to lead evidence on points which were not disclosed in the Petition. Though that evidence has been recorded, I am of the opinion that the same should be disregarded. Even if that evidence is taken into consideration the case remains one of *bona fide* belief that he was a voter. Element of intention to defraud is absent. Therefore no offence under the Act is committed.

* There is no allegation in the Petition that this personation was done at the instance of the Respondent or his agents. Hence the allegation if proved remains

a minor corrupt practice under clause (1) of Section 124 of the Act. In this view of the matter provisions of sub-clause (a) of clause (2) of section 100 of the Act must come into play and it must be proved that result of election was materially affected by the commission of this minor corrupt practice. Evidence to prove that the result of the election was materially affected is wholly wanting. Therefore this point also must be decided against the Petitioners. This being so, the issue is decided in the negative.

Issue 8.—No argument were addressed on this issue from the side of the Petitioners. The allegation on which this issue was based was given up. This issue, therefore, is decided in the negative.

Issue 9.—This issue is based on paragraph 12 of the Petition and list VI which accompanied it. The allegation in the Petition was that the return of election expenses lodged by the Respondent was false in material particulars. The details were given in the list mentioned above. The list contained five items out of which items 1 and 5 were scored out on the ground of vagueness. There remained three items—Nos. 2 to 4. Item No. 2 is in respect of the expenses of the printing of the leaflet Ext. P1. Item No. 3 related to the purchase of a motor truck No. USJ 5278. Item No. 4 related to the execution of the mortgage deed to raise money for the election purposes.

For the sake of convenience I change the order in dealing with the above items.

Item 3.—This point was almost given up at the time of arguments by the Petitioners' learned counsel. Hence it is unnecessary to consider it in any detail. It is rejected.

Item 4.—There is sufficient force in the arguments addressed on this point from the side of the Petitioners but the broad fact remains that the omission, if actually made, was not deliberate. Maximum permissible expenditure was of Rs. 8000/- and the actual expenditure of the Respondent was much below the above limit. If the amount received by the execution of the mortgage deed would have been shown in the return, the Respondent would not have been placed under any disadvantage. This being so, the point pressed does not help the Petitioner.

Item 2.—In view of the findings on items 3 and 4 there remains only item No. 2. Admittedly the expenses of the printing or leaflet Ext. P1 are not shown in the return of election expenses. The Respondent's answer to this charge is that he did not get that leaflet printed. It is important to note that the Respondent did not say at any stage of the proceedings that the omission was made through inadvertence or by mistake. On the other hand he insisted till the end of the case that the said leaflet was not printed by another person after the election of the Respondent was over, while giving my findings on issue 6(b) I have recorded a definite finding that the leaflet Ext. P1 was got printed by the Respondent in the beginning of December 1951 at a cost of Rs. 10 and odd and that the same was distributed by him extensively among the Gadarias. I have also found that the said leaflet contained, by clear imprecation, an appeal to vote on the ground of caste and thus I held, the Respondent was guilty of the commission of the corrupt practice of 'systematic appeal' as defined in section 124(5) of the Act. The question that remains for consideration is as to whether the omission of this item of expenditure from the return makes it 'false in any material particular' within the meaning of Section 124(4) of the Act.

Consideration of this point requires reference to the provisions of law and to the judicial interpretation of those provisions. Section 124(4) of the Act reads

'The making of any return of election expenses which is false in any material particular or the making of a declaration verifying any such return.'

It is clear that a candidate must be held to have committed this corrupt practice if his return of election expenses is false in any material particular. Under the Act as well as under the old law the phrase 'false in material particular' has been used and each word of the phrase has been interpreted and explained in good many decisions of the election courts. A distinction is drawn between 'false in any particular' and 'false in any material particular'. A candidate will not be held to have committed this corrupt practice if his return of election expenses is false in a particular which is not material but if the return is false in any particular which is material, it will amount to a corrupt practice. It is, therefore, essential to find as to what is meant by 'false', 'material' and 'particular'.

Meaning of particulars

This word, in relation to election expenses, is used first in Section 76 of the Act relevant part of which is as follows:—

'(2) Every such return shall be in *such form* and shall contain *such particulars* as may be prescribed, and shall be accompanied by declarations in the prescribed form by a candidate and his election agent made on oath or solemn affirmation before a Magistrate.'

'Such form' and 'such particulars' are prescribed in the Representation of the People (Conduct of Elections and Election Petition) Rules 1951 (hereinafter to be called the Rules). Rule 112(2) of the said Rules is as follows:—

'Every such return shall be in Form 26 and shall contain the particular specified in paragraphs 1 and 2 of Schedule IV and shall be accompanied by the declarations referred to in sub-section (2) of section 76.'

Thus the particulars which the return of election expenses should contain are specified in paragraphs 1 and 2 of Schedule IV. Paragraph 2 details as to what should be given under the head 'expenditure'. This paragraph has six parts—(a) to (f). Part (c) is further divided in sub-parts (i) to (vi). Part (a)(i) of paragraph 2 relates to 'costs whether paid or incurred of printing'. Therefore cost of printing leaflet Ext. P1 should have been shown in the return. Thus the return is incorrect to the extent of this omission. I have purposely used the word 'incorrect' in place of 'false' because I shall later on discuss as to what is meant by the latter word.

Meaning of material

Further question that arises in this connection is whether the particular of cost of printing was 'material' within the meaning of Section 124(4). The dictionary meaning of this word is 'important', 'essential' or 'necessary'. It may be noted that word 'material' does not have any reference to the extent of the amount involved. If a small amount of Rs. 10 or so is omitted, such omission will not be considered as 'not material' only because of the paltry involved. Similarly if a big amount of Rs. 1000/- is omitted, the omission will not be said to be material merely because a big sum is involved. As laid down in rule 111 of the Rules every expenditure 'incurred on account of or in connection with the conduct and management of the election' must be considered material. The cost of printing the leaflet Ext. P1 which was extensively distributed during the election days was certainly an expense incurred on account of or in connection with the conduct of the Respondent's election. Therefore, the same was material. Three points were urged from the side of the Respondent in this connection—first that the amount involved was too small to be taken into consideration, secondly that omission of the expenses incurred in connection of a corrupt practice was not material and thirdly again the omission was not material if the corrupt practice of 'systematic appeal' was not committed.

I have already pointed out that mere 'smallness' of the amount involved has no significance. In support of this view. I may cite the case Chail Behari Kapur Vs. Shiam Sunder Lal reported in Doabias Election Cases Vol. I page 164 (at 169). In that case a notice was found to have been printed at the instance of the returned candidate at a cost of Rs. 13 only. This expenditure was not shown in the return. It was found that the omission was deliberately made in order to evade the responsibility of making in the notice a statement of defamatory character which was a corrupt practice. In that case good many grounds for avoidance of the election were taken. All were rejected except those given above. The returned candidate was declared disqualified merely on the ground of omission of the paltry sum of Rs. 13 from the return of election expenses.

The other point urged from the Respondent's side is also of no weight. There is preponderance of authorities on this point. It has been held repeatedly as was held in the above-cited case that expenditure incurred in the commission of a corrupt practice must be shown in the return. One of such cases is the one cited above. Another case is Balasore South case reported in the above-cited book page 131 (at 135).

The third point was that if it was held that the leaflet Ext. P1 did not appeal to vote, its distribution did not amount to a corrupt practice and therefore omission of the cost of the printing of that leaflet from the return is not omission of a material particular. I could not quite appreciate this line of argument for the simple reason that a 'particular' may or may not relate to the expenses of commission of a corrupt practice; all the same the particular may be material. It was

urged that Respondent thought, though wrongly, that the distribution of leaflet Ext. P1 was a corrupt practice and under that wrong impression he intentionally omitted to give in his return cost of printing the leaflet. Therefore, the argument proceeded, such omission should not be considered material and the return should not be treated as false. This argument is fallacious on the face of it. Central point in the argument seems to be the wrong impression of corrupt practice but in my opinion the main ingredient is intention. If the commission is deliberate and is made with a view to conceal a real or supposed corrupt practice, it comes within the clutches of Section 124(4) of the Act.

The election courts always took a strict view of the provision. Even in a case where no other corrupt or illegal practice is proved to have been committed by a returned candidate but he is found to have lodged a false return, he will be held to have come within the clutches of law. In the Chittagong South Moham-madan Constituency case reported in Sen and Poddar 261, the election was upheld but the returned candidate was declared as disqualified only on the ground of the filing of false return.

Meaning of False

This brings me to the question of meaning and import of the word 'false'. For treating a return false, element of intention must be there. If the omission is made intentionally and deliberately, it makes the return false. The question, therefore, is as to whether the Respondent made the omission intentionally and deliberately or it was due to inadvertence. It may be noted that the Respondent does not at all allege that the omission was due to unintentional mistake. Hence it is not possible to hold that the omission was made by inadvertence. A case which is not at all pleaded cannot be assumed. The main and only plank of the Respondent was flat denial of the printing and distribution of the leaflet at his instance. It is proved beyond any doubt that the leaflet Ext. P1 was got printed by the Respondent and there is no doubt about the fact that he distributed it during his election. He intentionally and deliberately omitted to show the cost of printing the said leaflet.

Therefore, in view of what is said above, the Respondent is guilty of the corrupt practice defined in section 124(4) of the Act in respect of item No 2 of the list.

The Petitioners treat the commission of this corrupt practice as one of the grounds for avoidance of election of the Respondent under section 100(2)(a) of the Act. I have already considered the last mentioned provisions while dealing with issue 6(b). The Petitioners were to prove by positive evidence that result of the election was materially affected by the commission of this corrupt practice. This they have failed to show. Hence the election cannot be avoided on this ground.

The Petitioners also alleged that the commission of this corrupt practice entailed disqualification under section 140 of the Act. The provisions of Section 140 are clear. I have already found that the Respondent committed the corrupt practice hence, irrespective of the fact whether the election is or is not avoided under section 100 of the Act, the Respondent has entailed disqualification.

The result is that the Respondent is found to have committed the corrupt practice under section 124(4), that on that ground his election cannot be avoided under section 100(2) (a) but that he entailed disqualification under section 140 of the Act. The issue is decided accordingly.

Issue 10.—This issue is based on paragraph 8 of the Petition in which it was alleged that the Respondent and his agents carried electors on hired and procured vehicles. This is a major corrupt practice under clause (6) of section 123 of the Act. The details of the allegation are given in list III which accompanied the Petition. The said list consists of five items. I shall deal with this point item-wise.

Item I.—It was alleged that the truck of the Respondent No. USJ 5273 was freely used at Pairar Shahpur, Barnahal, Bhiraure, Chandpura and Semra polling stations for carrying voters to and from polling stations.

In paragraph 9 of the written statement of the Respondent the allegations contained in paragraph 8 of the petition are denied and the said allegations are said to be vague and indefinite. Again in paragraph 32 of the said written statement contents of list III of the Petition are denied and are said to be vague. It is important to note that no counter case has been set up by the Respondent in his written statement.

At a comparatively late stage of the hearing of the case a new development was made. The witnesses of the Respondent, one by one, began to reveal a story which, if it were true, had necessarily found the first mention in the written statement and would have been put to the Petitioners' witnesses when they were in the witness box. Fact of the matter is that the Respondent, after close of the Petitioners' evidence, introduced good many newly invented stories in order to meet the Petitioners' case which stories were neither mentioned in the written statement nor put to the Petitioners' witnesses. One such newly concocted story was the printing leaflet Ext. P1 by Udai Bhan Singh Pal which has been discussed above. The other story is that in the morning of the election day the Respondent started in his car for the visit of different polling stations but the car broke down at a village known as Takha in the early part of the day and remained unserviceable throughout the day. By inventing this story the Respondent attempted to falsify the whole mass of evidence produced from the side of the Petitioners about the use of car for carrying voters to and from different polling stations on the election day.

Before proceeding with the Petitioners' evidence on the point I may discuss the newly invented story of the Respondent about the breakdown of his car. As pointed out above, if this story had been true it would have necessarily been mentioned in the written statement and would have been put to the Petitioners' witnesses. This circumstance alone is, in my opinion, sufficient for rejecting this story. In fact the Respondent should not have been permitted to lead evidence on this point which was not revealed in the written statement. However, as the evidence has been allowed to be led on this point I proceed to scrutinise and weigh it. Mention of the break down of the car of the Respondent was made for the first time by Vishan Dayal who was the 12th witness of the Respondent. Full story of the break down was revealed at a such later stage by Rama Singh (R.W. 31). The witnesses on this point were examined in the following order and on the following dates:

R.W. 12.—Bishan Dayal Verma examined on 1st October 1953.

R.W. 31.—Ram Singh Driver of the Respondent's car examined on 12th October 1953.

R.W. 34.—Ejaz Mohammad Khan examined on 24th October 1953.

R.W. 42.—The Respondent examined on 24th October 1953.

R.W. 43.—Kunji Lal Sharma driver of Bishan Dayal's car examined on 24th October 1953.

The witnesses were examined on different dates. It is an old practice. Though a party to a suit is entitled to examine its witnesses in any order it likes, the other party is also entitled to draw any legitimate inference from the practice. Dhangar the Respondent was the last to come in the witness box on the point. He had the double advantage. He came last to make the deficiencies of other witnesses and to explain away the contradictions and discrepancies that had crept in the statement of other witnesses. The other advantage which Dhangar enjoyed was that he remained present throughout in the court room while his witnesses were examined and cross-examined. The usual and fair practice in the Civil Courts is that when a party is proposed to be examined and its presence in the court room is also necessary to instruct the counsel, such party is put into the witness box prior to the examination of other witnesses. In that case that party's presence in the court room during the examination of its witnesses cannot be objected to. But if the party is to be produced after other witnesses. It is kept outside the court room while the other witnesses are being examined. If this rule is violated the court is free to draw any inference that can legitimately be drawn from the violation of the aforesaid practice. There are authorities on this point. I may cite some of the commentators such as Burn Jones on Evidence Article 807, N.D. Basu's Commentary of the Indian Evidence Act III Edition page 1453 and Sarkar's Commentary, 1946 Edition page 1277. It is clear from what is said above that the Respondent adopted good many unfair tactics to gain his end.

As regards the witnesses produced on this point, Bishan Dayal Varma is an M.L.A. and is Principal of the Lodhi College of Jasrana. He is Joint Secretary of the U.P. Soshit Sangh (an organisation of the so-called lower caste people). He is Lodha by caste. The Respondent is Manager of a journal known as Soshit Sandesh. The witness is one of the members of the editorial committee of that journal. He was a worker of the Respondent during his election.

Ram Singh (R.W. 31) was driver of the Respondent's motor truck. He is Sikh convert. He belongs to Dhobi caste but tried his best to disown this. At first he stated that he knew only Gurmukhi and that he did not know Hindi.

He did so in order to disown his signatures on the original of the leaflet Ext. P2. But ultimately when he was confronted with his signatures on other admitted papers he had to admit his signatures.

Ejaz Mohammad Khan (R.W. 34) is a practising lawyer but he seems to be a hired witness. A perusal of his cross-examination will reveal the extent upto which he tried to go to show his independence. He miserably failed in that attempt. He claimed to be the President of the K. M. P. Party of Shikohabad but his own clerk Fazle Ilahi (R.W. 19) who was produced as a witness from the side of the Respondent falsified him. My reading of his evidence is that he has simply been hired to depose in this case. I say that he is probably hired to depose in this case because he had on a former occasion charged his expenses from the Respondent which expenses he had at first denied flatly but had to admit them when he was confronted with documents. He also at first denied being polling agent of the Respondent but when confronted with document he had to admit it.

As regards the Respondent himself, because of his conduct during the proceedings of this case I am not prepared to place my reliance on his testimony.

The last witness on this point was K. L. Sharma (R.W. 43). He was driver of Bishan Dayal's car. He is also of the same sort as the other witnesses on this point.

Bishan Dayal's story of journey on a borrowed car is of very doubtful nature. So is his return to Takha along with Ejaz Mohd. minus the Respondent. It is clear patchwork which has been introduced falsely only to justify their knowledge of the whole story of breakdown. It is also surprising and improbable that on the election day the Respondent would have wasted the whole day having been stranded because of the break down. To add to the aforesaid circumstances are the discrepancies in the statement of the witnesses. Bishan Dayal and Ejaz Mohd. Khan stated about visit to Chandikara but K. L. Sharma does not mention this. Bishan Dayal stated that the party went from Dalupur to Chandikara, Ejaz Mohd. Khan stated in the examination-in-chief that from Dalupur party went to a village name of which he did not remember. But in cross-examination he dropped that visit and stated that from Dalupur the party went direct to Shikohabad. He dropped the visit to Chandikara and and Sirsaganj both. When the Respondent's evidence is considered in the light of the strong circumstances given above the clear inference is that the whole story of break down is purely imaginary and is a belated attempt at concoction of a false story in order to meet the Petitioners' case.

The Petitioners' case was that the Respondent carried voters to different polling station on the polling day on his motor truck. Such polling stations were according to the Petition, Pairar Shahpur, Barnahal, Chandpura and Semra. Evidence was adduced about Sirsaganj as well. That evidence, however, should not have been permitted because that place is not named in the list. For this reason I am not prepared to consider the evidence relating to Sirsaganj.

Before consideration of evidence on this point certain circumstances should be borne in mind. The Respondent started his career as teacher. After serving in the schools run by the District Boards he was successful in securing any employment as teacher in the Govt. schools. He was drawing Rs. 150 per month with the advantages of pension and also the provident fund. He is Gadaria by caste and his family calling was that of agriculture which was carried on at a very moderate scale. He resigned from the Govt. service inspite of all the future prospects. He stated that he resigned only to carry on the agricultural work of his family. In the letter of resignation he mentioned that he was resigning in order to secure better prospects. He explained that by 'better prospects' he meant the family work of agriculture. This is again one of those mis-statements which he has introduced in the case to gain his end. The leaflet Ext. P2 which he admits expressly says that the Respondent left the Govt. service for standing for election. Along with resignation a mortgage deed was executed by which money was raised. Then followed the purchase of a motor truck—a 7 or 8 seater—which admittedly was used for election propaganda. The Respondent also admits that on the polling day he had started for a tour of his constituency and but for the alleged break down he would have completed his visits. From these facts, from the intensity of the different kinds of propaganda which was carried on as seriously as possible and also from the fact that the Respondent had staked all for his election fight, it can well be inferred that it was quite likely that the motor truck might have been used for carrying women and old men to the polling stations for giving vote with this back ground, I proceed to examine evidence.

Semra.—Girdhari (P.W. 25), Bhagola (P.W. 26) and Bharat Singh (P.W. 50) are the Petitioners' witnesses on this point. They stated that they saw the Respondent carrying voters at 8 or 9 a.m. in Semra. But according to Badshah Gupta (P.W. 52) the Respondent was at Sirsaganj at 8 or 8-30 A.M. Though this discrepancy can be explained but still it creates some doubt in my mind about its truth. Hence use of truck at Semra is not proved to the hilt.

Bernahal.—Om Prakash (P.W. 14) and Tulsi Ram (P.W. 21) and the witnesses on this point. The first witness stated that he brought this to the notice of Badshah Gupta. Had this been so, he would have certainly done something in the matter. Though the information was conveyed to him on the day following the polling, he would have, if really informed by Om Prakash, reported the matter to the Congress organisation of the district or of the State. Though I do not disbelieve the witnesses, I do not find evidence weighty enough. This is a major corrupt practice and evidence of very convincing nature is required to have an affirmative finding on the point.

Bhidaura.—Sipahi Ram (P.W. 3), Parshotam (P.W. 9) and Tilku (P.W. 28) are witnesses on the point. One of them was polling agent of Sia Ram Chaturvedi the Congress candidate. He was informed that voters were being brought on the motor truck of the Respondent but he took no steps to make any report to the authorities. Either he was a very careless polling agent or the occurrence is doubtful. It is proper under the circumstances to accept the latter alternative.

Chandpura.—No evidence.

Pairar Shahpur.—Ram Sanchi (P.W. 1), Mudgal (P.W. 6), Mahraj Singh (P.W. 10) and Babu Ram Kumhar (P.W. 13) are witnesses on this point. The evidence of these witnesses except Mudgal is of very ordinary type and is not weighty enough. Mudgal's statement needs consideration. He saw men being taken towards the polling station at close of the poll. None of those who were thus brought went to cast vote as voting time was over. Though I believe the facts which Mudgal has stated, his statement that the persons brought on he truck were voters was his inference, drawn from the facts that were brought to his notice by his workers.

After consideration of the evidence and of the circumstances discussed above I find that it is very likely that the car of the Respondent might have been used for carrying voters but at the same time I feel that the evidence is not so convincing as to justify a definite finding for the Petitioner's allegation.

Item 2.—Item 2 of list II of the Petition is that Mewa Ram Gadaria of Sirsaganj the worker of the respondent No. 1 arranged the carrying of voters at Sirsaganj by ekkas and carts. Evidence was confined to the use of ekkas. No carts were mentioned in evidence in connection with this allegation.

That Mewa Rama was worker and agent on the Respondent is abundantly proved. The allegation of the point made in the Petition has not been denied in the written Statement Bishan Dayal (R.W.12) admitted that Mewa Ram was one of the principal workers of the Respondent at Sirsaganj. He is said to be a relation of the Respondent in the leaflet Ext P2. In the leaflet Ext P1 address of the Respondent is given as 'C/o. Mewa Rama Baghel of Sirsaganj'. In addition to this, good many witnesses of the Petitioners' side stated that Mewa Rama was worker and agent of the Respondent. In view of the evidence mentioned above I find that it is abundantly proved that Mewa Rama was principal worker and agent of the Respondent at Sirsaganj.

As regards the main fact, it is important to note that the names of the *ekka*-drivers were not disclosed in the Petition. Non-disclosure of the names of the drivers in the Petition was not considered by us a fatal defect. But the fact remains that the non-disclosure of the names of the drivers placed the Respondent at a disadvantage and gave the Petitioners opportunity of changing the names. In my opinion this is an important circumstance against the Petitioners. Five drivers were named by the witnesses. They were Jamila, Ram Sahai, Munna, Sikandar and Puran. None of the voters who were carried on *ekkas* have been produced. Evidence about the engaging of the *ekkas*, and about payment to the *ekka*-drivers is not upto the mark. No steps were taken immediately by sending information to the authorities about the commission of this corrupt practice. Usual and sometimes useful practice is that telegrams are sent to different authorities or the protest is made in writing to the Presiding Officer. It was argued that the Presiding Officer had no jurisdiction outside the polling station. This is true but the protest in writing would have been on record. After due consideration of the evidence I find

that the evidence produced is not weighty enough for holding that the Respondent committed this corrupt practice.

Bullock-carts.

Evidence about the use of bullock carts for carrying voters to polling stations on the day of polling is also not quite satisfactory. It does not require any detailed notice. Even the Petitioners' learned counsel did not much press this point. In view of the above findings first part of the issue is decided in negative. The second part does not arise.

Issue 11.—Result of the findings recorded above is that neither the whole election nor even the election of the returned candidate can be avoided though there is no doubt about the fact that the Respondent committed the minor corrupt practice defined in Section 124(4) and (5) of the Act. The Petitioners who are only the voters in the constituency did a public service in filing the petition during the course of which it has been proved that the nefarious propaganda on the communal lines was carried out which, as pointed out elsewhere, cuts at the very foots of democracy. In a country like ours such propaganda must be put a stop to at any cost. Therefore when I propose dismissal of the Petition I should not be understood to have approved the communal propaganda carried on by the Respondent. On the contrary I think the propaganda was odious and in very bad spirit and the mentality behind it may safely be described as opposed to the spirit of the Constitution. Though I cannot under the peculiar circumstances of this case, help the Petitioners, I think that they have done a public service by inviting attention to the nature of the propaganda resorted to by the Respondent in the election.

Further, before I finish, I must record my strong dis-approval of the way in which the Respondent conducted the case. As pointed out above, he invented, tried to prove and strongly pressed for the totally false stories of the printing of leaflet Ext P1 at the instance of Udai Bhan Singh Pal and the break down of his motor truck. During the course of hearing the Petitioners' witnesses stated that villages Rahematullahpur and Balpura and several hamlets (naglas) each. The Respondent and his witnesses told a white lie when they stated that those villages had no naglas. Their lie was exposed by producing certified copies of the revenue papers and by reference to a previously produced application of the Respondent himself in which existence of one of the denied naglas was admitted.

I feel that I should mark my disapproval of the communal propaganda and of the conduct of the Petitioners' action in fighting out the issue by exonerating them from payment of the Respondent's costs.

I may further declare that by committing the corrupt practice under clauses (4) and (5) of section 124 of the Act the Respondent entailed dis-qualification under Section 140 of the Act.

The result is that I would dismiss the Petition with costs on parties and would declare that the Respondent entailed dis-qualification under section 140 of the Act because he is found to have committed the corrupt practices under section 124(4) and (5) of the Act.

The 20th February, 1954.

M. U. FARUQI, *Judicial Member.*

PER RAGHUNANDAN SARAN, CHAIRMAN.

I have been through the very elaborate and thorough judgment prepared by my learned brother, Sri M. U. Faruqi, Judicial Member, and so I propose to be very brief in my observations. The facts of the case have been set forth in full in Sri Faruqi's judgment, and issues Nos. 1 to 5 relating to the preliminary points have been disposed of already.

Issue No. 6(a).—The petitioner's allegations in para 6 of his petition are that the corrupt practice of undue influence extensively prevailed at the election as specified in list I attached to the petition and therefore the election was not a free election and should be declared to be wholly void. The finding of Sri Faruqi is that this corrupt practice has not been proved satisfactorily, and I agree with him in this finding.

Issue No. 6(b).—The Petitioner's allegations in para 13 of the petition are that the minor corrupt practice of systematic appeal to vote on grounds of caste and community was committed by the returned candidate and his agents.

and workers for the furtherance of the prospects of his election and that his election has been procured, and also the result of the election has been materially affected, by this corrupt practice; the particulars of this corrupt practice have been set forth in list VII attached to the petition. The finding of Sri Faruqi is that the commission of this corrupt practice has been proved, although it has not been proved that the respondent's election was procured or that the result of the election has been materially affected by this corrupt practice. In my opinion the commission of this corrupt practice either has not been proved satisfactorily, and I proceed to give my reasons for this opinion of mine.

This corrupt practice is said to have been committed in three ways; (1) by distribution of copies of the pamphlet Ext P1, entitled "Gadaria Bandhuon se appeal" by which the members of the Gadaria community in the constituency were affected; (2) by distribution of copies of the leaflet Ext P2, entitled "Ap ke labh ki bat", by which the members of the backward communities in the constituency were affected; and (3) by the shouting of the slogans "Brahman, Thakur, Lala, inka kardo munh kala aur inka kardo desh nikala", by which the members of the backward communities in the constituency became hateful of the high caste Hindus and of the candidates belonging to the high castes. I may mention that the returned candidate belongs to the Gadaria caste which is supposed to be one of the backward communities of the Hindus, while the defeated candidates were of the Brahman, Thakur, Ahir and Vaish castes which are supposed to be the upper castes of the Hindus. The petitioners also are Brahman and Thakurs etc.

I will first take up the pamphlet or leaflet Ext P1. The case of the petitioner is that this leaflet was got printed by the respondent himself in the 1st week of December 1951 and was widely distributed by his agents and workers among the Gadarias of his constituency before the date of polling which was 22nd January, 1952. The case of the respondent is one of absolute denial on this point, and his positive case is that this leaflet was got printed and distributed by one Udai Bhan Singh Pal for his own use and not for the use of the respondent; this Udai Bhan Singh Pal is also of the Gadaria community and has come forward as witness No. 11 for the respondent; he was a candidate in a neighbouring constituency and the date of polling in his constituency was 31st January, 1952; it is alleged that he got this leaflet printed and distributed in his own constituency in the last week of January 1952 for his own benefit when the polling in the respondent's constituency was already over and the leaflet could be of no benefit to him. The finding of Sri Faruqi is that this leaflet was got printed and distributed by the respondent himself in his own constituency for his own benefit before 22nd January, 1952 and I agree with him in this finding. However, Sri Faruqi's further finding is that the distribution of this leaflet was a systematic appeal to vote on grounds of caste and community, and it is here that I differ from him. The distribution of copies of this leaflet at various places in the constituency on different dates was certainly a systematic appeal to the Gadarias to help the respondent in his election, but the question is as to whether it was an appeal to vote for the respondent or to refrain from voting for the other candidates. I have given the matter my best consideration and in my opinion the leaflets Ext P1 is not at all an appeal to vote or refrain from voting; the contents of this leaflet contain no such appeal in express terms, and there are no circumstances either from which such an appeal could be inferred by implication. An examination of the contents of this document will show that it is essentially an appeal to the Gadarias to help the respondent in his election with workers and money; in the opening sentence of para. 3 of this leaflet the only demand is for 'Jan' (man) and 'dhan' (money) and not for votes; the closing portion of this para. enumerates the four ways in which the Gadaria brethren were to come forward with their aid; the 1st and 3rd items of this list are a demand for workers, the 2nd item is a demand for money, and the 4th and last item is a demand for conveyances; this list is exhaustive and not merely illustrative, and any deference to vote or refrain from voting is scrupulously avoided in it. In these circumstances it cannot be said that there is even an implied appeal in Ext P1 to the Gadarias to vote for the respondent. The facts of the Patiala case referred to by Sri Faruqi were somewhat different; in that case the appeal comprised of a number of items published from day to day in several daily newspapers in support of the Akali candidates; in most of these items there was an express appeal to vote while in others there was no such appeal, and the Tribunal held that because all the items formed component parts of a single series such an appeal could be read by implication in those items even in which it was not to be found in express terms; in the case before us we have a single publication Ext P1 in which there is no appeal to vote, and not any series in some parts of which

there may be such an appeal in express terms and in others no such appeal. My finding, therefore, is that though the leaflet Ext P1, being an appeal to the Gadarias, is rather communal in nature, it does not constitute a corrupt practice within the meaning of Section 124(3) of the Representation of the People Act, 1951, as it is not an appeal to vote or refrain from voting.

Next we come to the leaflet Ext P2 entitled 'Apke labh ki bat'. The Respondent admits having got copies of this leaflet printed and distributed in his constituency in furtherance of the prospects of his election but contends that it is not at all an appeal on grounds of caste or community but is an appeal on economic considerations only. Sri Faruqi finds that it is an appeal on grounds of community, but after giving the matter my best consideration I am of the opinion that it is not such an appeal. This leaflet espouses the cause of wage earners such as peasants, workers, artisans, petty shop-keepers and petty servants like patwaris and school teachers and urges them to unite against those owning large vested interests and calls upon them to support in the election the respondent, who is one of them. In a sense the wage earners form a community apart from the community of capitalists, land-lords, mill-owners and those engaged in the learned professions or pursuing other high walks of life, but such a community does not appear to be within the scope of section 124(5) of the Representation of the People Act, 1951; in this section the word community has been used along with the words caste, race and religion and must be given a narrower meaning than the dictionary meaning of a body of people having common interest. I may add that the signatories of the leaflet Ext P2 include also a Muslim, an Ahir or Yadav, a Brahman, a Thakur, a Kayastha and a Vaish, and in a sense this leaflet is the election manifesto of the respondent and declares the public policy of the K.M.P. Party that had set up the respondent as its candidate. I hold accordingly.

Lastly, we come to the slogans "Brahman, Thakur, Lala, inka kardo munh kala aur inko kardo desh nikala" alleged to have been shouted on behalf of the respondent at gatherings to incite the low caste Hindus against the candidates belonging to the high castes. The respondent denies that any such slogans were shouted on his behalf at any time and I see no good reason to believe the petitioner's evidence on this point in preference to the respondent's evidence. Also the facts and circumstances of the case make it very improbable that any such slogans were shouted, the shouting of such slogans would have embittered the feelings of the high caste Hindus against the respondent and possibly there might have been riots also and he could not be expected to have taken this risk; then his agents and workers included some high caste Hindus as well and as pointed out above some high caste Hindus were among the signatories of the leaflet Ext P2 also, and they would not have tolerated any such bitter communal propaganda on his behalf; even his witnesses include some high caste Hindus who say that there was no such propaganda on his behalf; and then it has to be remembered that the respondent was not an independent candidate but was set up by the K.M.P. party which was not at all a party formed on communal lines and would not have suffered such a propaganda to be made on his behalf. I hold, therefore, that there was no appeal at all on behalf of the respondent to vote or refrain from voting on grounds of caste or community.

Issue No. 7.—This issue relates to the major corrupt practice of personation as defined in section 123(3) of the Representation of the People Act 1951; the petitioner has relied upon three instances only, and the finding of Sri Faruqi is that in none of these instances the commission of this corrupt practice has been proved satisfactorily. I fully agree with him on this subject.

Issue No. 8.—As observed by Sri Faruqi, the petitioner did not press this issue and rather abandoned it. The issue is, therefore, found against the petitioner.

Issue No. 9.—The allegations on this point are contained in para. 2 of the petition and the particulars are given in list VI attached to the petition. Three items are in controversy and it is contended that because of these items the return of election expenses filed by the respondent is false in material particulars and the respondent has, therefore, committed the minor corrupt practice defined in section 124(4) of the Representation of the People Act, 1951. These three items are as follows:—

- (a) the cost of the printing of the leaflet Ext. P1, 'Gadaria Bandhuon se appeal', not shown in the return. The cost is said to have been about Rs. 10.

- (b) the respondent purchased and used for his election a motor truck USJ 5278 but in his return of election expenses he showed its price and maintenance and running charges under a wrong head and not under the proper head.
- (c) the respondent along with his brother borrowed Rs. 2,000/- to meet the expenses of his election by mortgaging his house on 20th August, 1951, but failed to show this amount in his return.

So far as item (b) is concerned it was not pressed on behalf of the Petitioner and I agree with Sri Faruqi in rejecting the Petitioners' case on this point.

As regards item (c) the respondent's contention is that the mortgage had no connection at all with the election and no part of the mortgage money was utilized in meeting the election expenses. Sri Faruqi is not prepared to accept the respondent's case on this point, but at the same time he is of the opinion that the omission of the part of the respondent to show this item in his return was not deliberate or material. I would go a step further and hold that it has not been proved satisfactorily that the mortgage was made to procure money for the election or that any part of the mortgage money was spent over the election. As such the respondent's return is not at all false in this respect.

The most controversial item is the item (a) which is the cost of printing of the leaflet Ext P1, 'Gadaria Bandhuon se appeal' and which has not been shown in the respondent's return. I agree with Sri Faruqi, as mentioned above, that this leaflet was got printed and distributed by the respondent in connection with his election, and as such its cost of printing should have been shown in his return. Sri Faruqi is of the view that by failure to show this cost in his return the respondent has committed the minor corrupt practice defined in Section 124(4) of the Act and that although the commission of this corrupt practice is not sufficient to disturb the election as the result of the election has not been shown to have been affected thereby, yet it entails upon him a disqualification for membership of the Legislature under the provisions of Section 140 of the Act. I differ from Sri Faruqi and hold that omission on the part of the respondent in respect of the item does not entail any disqualification either, as in my opinion though the return of election expenses is certainly false in this particular, yet this particular is not material within the meaning of Section 124(4). Every particular would not be a material particular, and I think that a particular would be materially only if its inclusion in the return would raise the total amount of expenses to more than the prescribed maximum limit or if it related to some corrupt or illegal practice. Neither of these conditions exists in this case; as found already by me the distribution of the leaflet Ext P1 was not a corrupt practice as defined in Section 124(5) of the Act as Ext P1 did not contain any appeal to vote or refrain from voting; and its cost of printing was Rs. 10/- or Rs. 11/- only, and the respondent could have easily included it in his return without exceeding the prescribed maximum. Possibly the respondent was under the mistaken belief that the issuing of this leaflet was a corrupt practice and was wrongly advised to omit its cost of printing in his return, but any such mentality of the respondent would not make this particular material, if it is not in fact material.

I hold, therefore, that no minor corrupt practice as defined in Section 124(4) of the Act has been proved in this case.

Issue 10.—This issue relates to the hiring and procuring of vehicles for the conveyance of electors to the polling stations and back which is a major corrupt practice defined in Section 123(6) of the Act. The allegations on this point are contained in para. 8 of the petition and the particulars are given in list III. The motor truck No. USJ 5278 and some ekkas and bullock-carts are said to have been used in this way. The case of the respondent is one of absolute denial, and Sri Faruqi is of the opinion that the commission of this corrupt practice has not been proved satisfactorily in respect of any of these vehicles. I fully agree with him and hold that this corrupt practice either has not been proved.

Issue 11.—In view of all that has been said above the result is that no corrupt practice, major or minor, has been proved in this case, and consequently there are no grounds at all for declaring the election to be wholly void or for declaring the respondent's election to be void or for making any order under Section 99 of the Act, and the Election Petition must be dismissed. However, in view of the conduct of the respondent in the election and in the trial of the petition I would not allow him any costs; in the election he issued the leaflet Ext P1 which was of a communal nature and as such undesirable, and further

he omitted to show its cost in his return of election expenses thereby rendering the return false; and in the trial he wilfully denied having issued this leaflet and deliberately assigned its origin to Udai Bhan Singh Pal and unnecessarily prolonged the trial by controverting the petitioner's case on this point, and these facts are sufficient to deprive him of his costs in this case. I would, therefore, order the parties to pay their own costs.

The 20th February, 1954.

R. SARAN, *Chairman.*

PER A. SANYAL, ADVOCATE MEMBER

This is an election petition rather out of the ordinary. There were as many as 10 persons nominated as candidates for election in the Karhal-West-cum-Shikohabad East Constituency of the Uttar Pradesh Legislative Assembly. Out of these ten, respondents Nos. 9 and 10 withdrew their candidature within the time allowed by the rules and Respondent No. 7 is alleged to have withdrawn in favour of Respondent No. 4. Thus there were seven candidates who contested the election and Respondent No. 1 was successful. There were six defeated candidates but no one came forward to challenge the election and it was left for some voters to take upon themselves the duty to challenge the election. There are seven petitioners living in different parts of the constituency and no one has taken any part in the conduct of the election petition at any stage except petitioner No. 1, Sri Shiva Dutt. This petitioner has signed and verified the petition and the particulars attached to the petition. Of the seven petitioners only two namely Sri Risal Singh and Sri Gulab Singh have been produced as witnesses in the case and Sri Shiv Dutt who was conducting the whole case with the zeal of a defeated candidate and who was present in the court throughout the proceeding has been kept back to avoid cross-examination and disclosure of uncomfortable facts. The petitioner Sri Shiv Dutt is a close relation of Pt. Sia Ram who was a defeated candidate in this election. This Pt. Sia Ram took a very prominent and active part in the conduct of this case and perhaps it will not be too much to assume that he set up Sri Shiv Dutt to figure as the petitioner, (the other six petitioners only lending their names and prosecuted this case).

There is another aspect of the case which should be noticed. The prosecution and *pairwi* of this petition must have cost at least Rs. 4,000. Where did this money come from? Sri Risal Singh, one of the petitioners produced in this case says that his contribution was about Rs. 250. That is too meagre a sum to fight this case. The interest taken by the petitioners in this case will appear from the statement of Sri Gulab Singh petitioner and witness No. 36 who says in his statement, "It had been settled between the petitioners that everything would be done by Sri Shiv Dutt and the other petitioners would not have to go about. I do not know if any Vakil of Mainpuri was also consulted". I have no doubt in my mind that the entire expenditure for this case was paid by Pt. Sia Ram and Sri Shiv Dutt.

The origin of this petition is shrouded in mystery. Pt. Sia Ram in his statement says that one Thakur Surendra Singh of Habathpur came to him for consultation for filing an election petition. This Thakur Surendra Singh is not to be confused with Surendra Singh Chowdhry witness No. 47. This Thakur Surendra Singh, whose righteous wrath was roused by the extensive propaganda on communal lines in this election has not been produced in this case and is not a petitioner. Pt. Sia Ram in his statements says that he did not think it worthwhile to file the election petition himself. It was for this reason that he set up his near relation Sri Shiv Dutt to file the petition and I have no doubt in my mind that he financed the litigation.

Issue No. 6.—Issue No. 6 is divided into two parts 6(a) and 6(b). Issue 6(a) reads as follows. "Is the election wholly void on the ground alleged in para. 6 of the petition as amended by the tribunal?"

This issue has been decided by my learned colleagues in the negative and I agree with the conclusion.

Issue 6(b) reads as follows: "Is the election of the Respondent No. 1 void on the grounds alleged in para. 13 of the petition?"

Regarding this issue I have difference with my learned colleague Sri M. U. Faruqi and therefore it has become necessary for me to give my reason in detail.

The petitioner's allegation in paragraph 13 is to the effect that Respondent No. 1, his agents and workers made a systematic appeal to electors of Gadaria caste to vote on the ground of caste for the Respondent No. 1 belonging the same caste. It is further stated in the said paragraph that a large number of electors were led thereby to vote for the said Respondent and that the majority in favour of Respondent No. 1 was procured by means of this corrupt practice and the result of the election has been materially affected thereby.

The systematic appeal is alleged to have been made by the issue and distribution of two leaflets, one entitled, "Gadaria Bandhuon se appeal", Ext. P1, and a leaflet entitled, "Ap ke labh ki bat", Ext. P2 and further by propaganda on loud-speakers and individual canvassing. The last method of propaganda may be disposed of first.

There are two parts in this propaganda.

(a) Individual canvassing.

(b) Propaganda on loud-speakers.

Regarding individual canvassing namely that Respondent No. 1, his workers and agents actually canvassed for votes from Gadaria voters on reasons of caste, there is no evidence and we may dismiss further consideration of that allegation.

Regarding propaganda on loud-speakers, it is said that Respondent No. 1, his workers and agents shouted the following slogan, "Brahmin, Thakur, Lala, unka kardo munh kala aur deda desh nikal". It is said that this slogan was shouted throughout the constituency, throughout the market of Sirsaganj and other market places. Many witnesses have been produced who glibly trot-out and repeat this slogan as having been publicly shouted but I am not inclined to give any weight to this evidence. In order to understand my reason it is necessary to approach the case in the following way.

The total number of electors in this constituency is between 67,000 and 68,000. Pt Sia Ram says it is 72,000. Sri Dhargar has in his evidence divided the voters according to their castes as follows:—

Ahirs	..	12,000
Brahmins	..	11,000
Jatavs	..	10,000
Thakurs	..	10,000
Kachhis	..	6,000
Lodhis	..	6,000
Vaish	..	4,000
Muslims	..	3,000
Gadaria	..	2,500
Tellis	..	1,000
Miscellaneous	..	2,000
TOTAL	..	67,500

The estimate according to caste has been prepared from old census report compared with enquiry made by Respondent No. 1 during his election tour and I shall accept these figures as approximately correct.

With this data before us, no man in his senses would go about shouting the slogans quoted above and alienate, nay antagonise the feelings of the Brahmins, Thakurs, and Vaish etc. who are the most influential people in the constituency with a view to get 2,500 votes of the Gadarias. It is most unnatural and unlikely and I have great hesitation in accepting the oral evidence produced on this point. I shall not pause to consider each witness individually and it is not necessary to do so. There is evidence that the population of Sirsaganj is between six and seven thousand and that of Gadarias is between two and three hundred. The majority population of Sirsaganj consists of Vaishes and Jains besides other high castes who carry on business in that market. If we were to accept the evidence produced by the petitioners in this case, we have to accept that this slogan was shouted in open market on loud-speakers within the hearing of Brahmin, Thakur, Vaish etc. I, for one cannot believe that this senseless and foolish act was done by Respondent No. 1 who was out to please people to get their votes. Of course, there is no documentary evidence of this and the oral evidence is unreliable. It is not denied that Respondent No. 1 carried on his propaganda on the lines stated in the leaflet Ext. P2 and this may have been construed as propaganda against Brahmin, Thakur, Lala and

the petitioners and their witnesses have twisted this into the slogan of the kind stated above.

I will now deal with leaflet Ext. P2 entitled, "Ap ke labh ki bat".

This leaflet was admittedly issued by Respondent No. 1. Order for printing of this leaflet was placed with the Brahma Press on 13th December, 1951 and the printed leaflets were delivered to him on 25th December 1951. It is alleged that this leaflet incited hatred against the higher caste people.

This leaflet Ext. P2 is an appeal issued by a large number of persons belonging to various castes and includes in it Kayasth, Vaish, Muslim and workers of various kinds asking people to vote for Respondent No. 1. I have read the leaflet more than once and I have no hesitation in my mind that this leaflet, on a proper interpretation, is not hit by the provisions of Section 124(5) of the Representation of the People Act. It is not an appeal to the electors to cast their votes on grounds of caste, race, community or religion and it is not an appeal to religious or caste sentiments of the voters. This leaflet Ext. P2 is really an appeal to the exploited class of people to combine and see that they are not exploited any further by the exploiters. It is really an attack on the exploiters on economic basis and has nothing to do with caste or religion. I shall quote just two passages from this leaflet to show that it is an appeal on economic basis as I have stated above and has nothing to do with religion, caste and community of the voters.

"Swatantra Bharat ke partantra nagriko, apne desh ki asli samasya kisan mazdur aur kamere bahion ki hai. In logon men kheti karane vale va usese rozi kamane vale sabhi log jaise Dukandar, Barhai, Luhar, Darji, Bhurji, Bunkar, Dhunkar, Julahe, Sunar, Kumhar, Teli, Tamoli, Kasre, Nai, Mochi, Dhobi, va anya anya peshe karne wale log ajate hain. Ye garib hamare desh men saumen nabbe hain magar inki kamzori yah hai ke ye kuparh, garib aur asangathit hain. In kamzorion ka anuchit aur najayaz faida uthakar inhi ki garhi kamai se mote hokar baki sau piche das admi 'miyan ki juti miyan ki chand' ki huc hain jo inhi se kamvake thaluagiri men mufta ka mal khat hain aur maje urate hain. In das fisadi muft khoron, nithullon aur haramkhano me shaharon aur gaon key bare kapa jane vale dhanimani, Poojipati, bare bare seth sauhakar, kal karkhane vale, raje mahraje, Zamindar, Taulkedar, mathadhish, pande pujari aur inke dalal va thekadar shamil hain. Desh men jo swarjya ava uska pura faida abhi tak inhi bare logon ne uthaya, usi faida ko inhon ne nabbe fisdi kisan, mazdur aur anya prakar ke kamere logon men nahin batne diya. Age bhi ye bare kahne janavale thaluae log is fayde ko sada ke lie hathiyane aur harap jane ki ghat men hain aur ham hath pair se kam karne vale kisan, mazdur aur kamere bhaion ko us fayde se dur rakhana chahte hain. Ham logon ko inse savdhan rahna hai."

- (2) "Ham garib kisan, mazdur, Dukandar, naukhar pesha aur sabhi prakar ke kamere bhaion ne milkar yah tai kiya hai ki apne sube ki kannooni sabha ke liye jo ham sabhi ke liye kannon banati hai—Sri Bansidasji Dhangar Gadrea ko Bandail aur Sirsaganj ke ilake se apne voton se chunkar bheja jaye—islie ham sabhi logon ko chahie ki inhin ko apane kecmati vote inke jhopari vale baxe men dalen."

It is not necessary to dilate further on this point because I have absolutely no doubt in my mind that this leaflet is an attack on capitalists, zamindar, etc. on behalf of the Kisan, Mazdoor etc. which is the declared public policy of the K.M.P. Party to which the respondent No. 1 belongs.

The third part of the charge consist on issuing and distributing the leaflet entitled, 'Gadaria Bandhuon se appeal' Ext. P1. This part of the case has created real difference of the opinion and has to be considered with great care. It has been said by my learned colleague Sri Faruqi that Respondent No. 1 was satisfied with merely denying the allegation about the distribution of the said leaflet and did not set up the case as it developed later in evidence. No. 1 of list VII of particulars reads as follows, "The pamphlet entitled, 'Gadaria Bandhuon se appeal' was freely distributed and the members of Gadaria community were evidently affected by it." In his written statement, besides denying the allegations in paragraph 13 and particulars in list VII, he says in paragraph 18 of the written statement as follows, "No pamphlet was issued or distributed in the Respondent's constituency in the name of Ganga Prasad Pal Visharad and the answering Respondent has nothing to do with any such."

pamphlet. The pamphlet has not been attached to the petition and there is every scope for fabricated pamphlet being introduced at a later stage." Objection is taken that Respondent No. 1 did not disclose in his written statement that a leaflet like Ext. P1 was got printed and distributed by Sri Udai Bhan Pal. It seems to me that it was not possible for either party to know the documents that were in the possession of Sri Mohan Misra, proprietor of the Brahma Press and it was not till after 8th September 1953 that the parties or in any case Respondent No. 1 came to know the contents of the said documents. I will not therefore impute any motive to Respondent No. 1 in withholding from the Tribunal information regarding the printing of the leaflet Ext. P1.

The burden of proving that Ext. P1 produced in this case was got printed at the Brahma Press by Respondent No. 1 and distributed in his constituency lies on petitioners. They have attempted to prove this by oral evidence. It may be noted at this stage that Ext. P1 which is alleged to have been distributed was in the possession of Sri Risal Singh petitioner and witness No. 8. He says in his statement "The first pamphlet of Sri Dhangar that I got was entitled, 'Gadaria bandhuon se appeal', one Ram Narain Vaish of Sirsaganj had received this leaflet and he gave it to me. "In cross-examination he says as follows, "The first leaflet that I got was Ext. P1 and I got it in July or August in 1951." It will thus appear that Ext. P1 was in the possession of one of the petitioners, but it was not produced along with the petition nor was it filed on 31st of January 1953 when issues were framed. It was filed only on 27th of April 1953 when the evidence was to begin. The case was however adjourned on that date but the documents were filed. It seems to me that the actual document Ext. P1 was not in the possession of any of the petitioners or their witnesses until it was secured from somewhere and filed as late as 27th April 1953.

In order to prove that leaflet Ext. P1 was printed at the Brahma Press and that Respondent No. 1 placed the order for printing, the petitioners have carefully prepared oral evidence on which no reliance can be placed. It is said that before the filing of the petition some of the petitioners and Pt. Sia Ram visited the Brahma Press. I shall quote below a portion of the statement of Pt. Sia Ram on this point. "The leaflet Ext. P1 was in my knowledge and also in knowledge of Thakur Surendra Singh etc., and if the documentary evidence of its printing could be available it would be a strong proof and so I advised them to ascertain about it from the Press. When Surendra Singh etc. came to me for consultation they had in their possession no copy of Ext. P1. I do not know from whose custody the leaflet Ext. P1 on the record of the case has come. Surendra Singh etc. told me afterwards that they had been to the Brahma Press Etawah and had seen there papers connected with the printing of Ext. P1 and then at their request I also went to the Press to satisfy myself. Pancham Singh, Shiv Dutt Pratap Singh petitioners also asked me to go to the Press to satisfy myself. All of them said that they had seen the papers in the Brahma Press, Etawah. As far as I remember Shiv Dutt and Surendra Singh were both with me when I visited the Press first time; it was probably in the end of March or in the first fortnight of April, 1952".

The statement of Pt. Sia Ram is revealing and shows the working of his mind and there is no doubt that it is his brain which is behind the whole case. He has prepared the evidence with meticulous care and therefore it is necessary to examine the same with care and circumspection.

Pt. Sia Ram says that leaflet Ext. P1 was in his knowledge and in the knowledge of Thakur Surendra Singh etc. Who this "etc." are we do not know but it is clear that they had not got a copy of the leaflet Ext. P1. I have quoted above from the statement of Sri Risal Singh which shows that he had a copy of Ext. P1 some time in July or August 1951. This statement of Sri Risal Singh is a deliberate lie because according to petitioners' evidence even the magazine from which the Ext. P1 is a reprint was not out till about November, 1951. Thus when the petition was filed or even when petitioners came to Sia Ram for consultation they had no copy of Ext. P1. It was under these circumstances that Pt. Sia Ram wanted some documentary evidence to come into existence to show that Ext. P1 was printed in the Brahma Press at the instance of Respondent No. 1 to lay the foundation for this. Pt. Sia Ram says that he along with Shiv Dutt and Surendra Singh went to Etawah and visited the Brahma Press and saw certain documents particularly Sattu Bahi in the possession of Sri Mohan Misra the proprietor of the Press. Pt. Sia Ram also says that Surendra Singh etc. had told him that they had seen at the Brahma Press papers connected with the printing of Ext. P1. It will appear from this that Surendra Singh etc. (we do not know who the etc. are) had visited the Brahma Press.

and it was followed by another visit by Pt. Sia Ram with Shiv Dutt and Surendra Singh. We cannot believe all these statements at all. Firstly, it is impossible to conceive that Surendra Singh and others had visited the Brahma Press and had seen these documents. No evidence has been given on this point and Surendra Singh has not been examined in the case. This fact was not put to Mohan Misra when he was in the witness box. Then comes the visit of Pt. Sia Ram to the Brahma Press and he says that Mohan Misra obligingly showed papers in connection with the printing of Ext. P1 to him and to Shiv Dutt and Surendra Singh who accompanied him. I cannot believe that Mohan Misra would, as a businessman showed papers of a customer to a third person and Mohan Misra denies it. Shiv Dutt and Surendra Singh have not been produced in this case. If therefore we have to believe this part of the case namely that Satti Bahi with accounts were shown to Pt. Sia Ram, we have to rely on the sole testimony of this witness and I unhesitatingly place no reliance on him and will reject this part of this case as falls. The second part of the case regarding the printing of Ext. P1 relates to the period from 18th August 1953 to 23rd August 1953. As I have said above Pt. Sia Ram and the petitioners had not with them a copy of Ex. P1, but they had 'knowledge' of the existence of this document and that it had been printed at the Brahma Press, Etawah. Believing that the papers in the possession of the proprietor of Brahma Press would support the case of the petitioners, Mohan Misra was summoned as a witness on 12th August 1953 and the evidence of the petitioner was to begin on 17th August 1953. Mohan Misra came to Lucknow on 18th August 1953 but was not produced as a witness by the petitioners. Mohan Misra says that he showed the papers in his possession to Pt. Sia Ram and the counsel for the petitioners and he was told by them that the papers in his possession were of no use to them. It was in these circumstances that Pt. Sia Ram found it necessary to visit the Brahma Press and do something in the matter. Pt. Sia Ram says that Mohan Misra was questioned by him about the Satti Bahi and the leader but he said they might be in his office. Thereupon, the petitioner did not produce him in court but asked him to go back to Etawah and bring those papers and I too went to Etawah to get those papers. I do not believe that Mohan Misra would make what I may call a confession and I believe that the real intention of Pt. Sia Ram to go to Etawah this time was to get papers that will help the petitioners in their case. Now, Pt. Sia Ram could have gone to Etawah first on the way to Mainpuri and then proceeded home but he does not do so and with a purpose. Pt. Sia Ram knew very well that if he went alone to Mohan Misra he will not show the papers to him; further, he will not be able to influence him to do what he wanted him to do. It is therefore that he goes to Mainpuri and gets hold of Sri Dularey Lal Pandey, paternal uncle of Mohan Misra and a retired reader of collectorate, Mainpuri. Pt. Sia Ram knew very well that this Dularey Lal Pandey will be able to influence Mohan Misra. He was therefore taken to Etawah and they both go to Etawah but not together and it is deliberately stated by them that they went on different missions and at different times but by co-incidence they were both together at the press of Mohan Misra. They want to make out that their meeting together at the Brahma Press at the psychological moment was by accident. I have however no doubt in my mind that this meeting was not by accident but by design. These two veterans, one a veteran lawyer and the other a veteran reader of collectorate, both well versed how cases are handled, came together to put pressure on Mohan Misra and make him do something which was against moral principles. The meeting on that occasion is described by these two witnesses and if their statements are to be believed, Mohan Misra made a confession before them that the leaflet of Ganga Prasad Pal without the name of the press was not to be found and the sheet containing entry of 8th December 1951 was not to be found and had been torn. Dularey Lal Pandey happens to be sitting there as an uninterested spectator later on to corroborate Pt. Sia Ram. Last part of this scene is described by Dularey Lal as follows, "Thereafter Pt. Sia Ram went away in my presence. After Pt. Sia Ram's departure I explained to Mohanji that such things were not in the interest of the press." From this we are asked to gather that Sri Dularey Lal gave what I call paternal advice to Mohan Misra and went away. I believe that they came to put pressure on Mohan Misra to bring into existence documents which would help them. That this is so will appear from a letter Ex. P7 written by Mohan Misra to Dularey Lal. This letter discloses that the visit of Pt. Sia Ram and Dularey Lal was not so innocent as they represented it to be. Dularey Lal had gone there as I have said above to put pressure on Mohan Misra and that was the sole object of his visit to Etawah on that occasion. He was asked in cross-examination the object of his visit but he refused to disclose it and he said that he had some private business with Bedh Nidhi, uncle of Mohan Misra. Bedh Nidhi was not at Etawah and Dularey Lal returned to Mainpuri without doing any business. If the statement of Dularey Lal is

to be believed, his advice to Mohan Misra did not call for a letter of the kind actually written by Mohan Misra to Dulare Lal on 23rd August 1952. This letter has been produced from the custody of Dulare Lal. It is signed and as personal (Vyaktiga). This letter shows the respect at Mohan Misra for Dulare Lal. It further shows that he was asked by him to do something which was "Annik" namely against moral principles. I have read this letter more than once and I feel that the visit of Pt. Sri Ram and Dulare Lal was with the object of putting pressure on Mohan Misra as stated above.

I have already said above that none of the parties had any knowledge of the actual papers in the possession of Mohan Misra. The petitioners summoned this witness because they had knowledge that a leaflet (Ex P1) had been printed at the Brahma Press and they expected that the papers would disclose that Respondent No. 1 got it printed. Respondent No. 1 was sure that he had not got it printed and therefore he also expected that when the papers were produced they will show that he did not get it printed. It was for this reason that he summoned Mohan Misra. Both were really in the dark and it was not till the documents were actually produced in court that the contents were known.

A point has been made against Respondent No. 1 that in his written statement he did not set up the case that developed when he gave evidence in the case, namely, that Uday Bhan Pal got this leaflet (Ex P1) printed at the Brahma Press. Respondent No. 1 filed his written statement on 2nd January 1953 when no one knew the contents of the documents in possession of Mohan Misra as I have said above, further it is unfair to Respondent No. 1 to fasten this case on him and say that it was his positive case and he should have set this up in his defence. When this evidence was disclosed then Respondent No. 1 had to produce Uday Bhan Pal to prove documents that had been filed by Mohan Misra.

When Pt. Sri Ram was disappointed and could not prevail upon Mohan Misra to do what he wanted him to do, that he thought of producing witnesses to show that it was Respondent No. 1 who placed the order for the printing of this leaflet at the Brahma Press. These witnesses are Ayodhya Prasad, and Surendra Singh Chowdhry witnesses Nos. PW 44 and PW 47 respectively. I shall deal with the evidence of these witnesses to show that their testimony cannot be relied upon. Ayodhya Prasad P.W. 44, 23rd September 1953 he says that he was honorary worker in the election campaign of Surendra Singh in his election campaign. He states 'I saw Surendra Singh twice or thrice to Brahma Press Etawah for the printing of literature and on two of these occasions Sri Dhargar met us in the Press.' He further says in cross-examination, 'I first accompanied Surendra Singh to Brahma Press in the beginning of December 1951 and it was to get a leaflet printed for the election campaign, on that occasion we did not come across Sri Dhargar, we came across him on the occasion of our second visit which was also in December but I cannot say how many days after the first visit.' It was during the second visit that order was placed by Respondent No. 1 for the printing of Ex P1. He further says that he did not remember what the title of Sri Dhargar's leaflet was nor its contents. Sri Dhargar paid Rs. 5 to Mohanji. This evidence made the case of the petitioners as stated by Pt. Sri Ram doubtful. According to this statement the visit of Sri Dhargar to place the order for Ex P1 would be sometime in the second week of December. Whereas Pt. Sri Ram had fixed the date as 6th December. It therefore became necessary for the petitioners to produce Surendra Singh and he was examined on 24th of September. This witness says that Sri Dhargar met him twice in the Brahma Press first in the last week of November and again on the 4th or 5th December thus bringing the second visit close to the 6th of December 1951. There is obvious contradiction between these two witnesses about their visit to the Brahma Press. The object of the visit of these two persons to the Press was to get a leaflet printed for election campaign of Sri Surendra Singh. He does not remember the title of that leaflet or its content. It is suggested by this witness that his visit to the Brahma Press was to get leaflet printed for Surendra Singh. Surendra Singh in his cross-examination says 'I got only these two leaflets printed and they were once reprinted also, I gave order for these leaflets at an interval of one week, first I gave order for the printing of these leaflets "Janta ko khush khavri" and it was in the first week of January 1952. We are asked to believe that for the printing of these leaflets of Surendra Singh these two persons visited the Brahma Press two or three times. Sri Surendra Singh in his statement says that he had gone to Mohanji on the 4th or 5th of December to find out his rates of printing. It has come in evidence that this Mohanji was worker of Surendra Singh and that Brahma Press was only fifty yards from his house. He further says that he went to the Brahma Press only twice or thrice upto the polling day as Mohanji himself used to come to his house. It is impossible

to believe that a big man as he poses himself would go to the Brahma Press to enquire about the rates of printing from Mohanji when Mohanji himself used to come to his house and when the Press was only fifty yards from his house. Moreover, if the visit was only to ascertain the rates of printing it was not necessary for him to go at all to the Press as Mohanji could have given the information to him at his house and it was not necessary for two persons to go to the Press for that purpose and Ayodhya Prasad alone could have done the work. It is worthy of note that Sri Dhangar did go to the Brahma Press on 13th December 1951 to place order for the printing of Ex. P2 i.e., the second week of December about which time Ayodhya Prasad said he met Respondent No. 1. It is also worthy of note that during the whole election campaign Sri Surendra Singh visited the Brahma Press twice or thrice and on two of these occasions he meets Respondent No. 1. This coincidence is very unusual and has created serious doubt in my mind as to the reliability of these witnesses.

I am therefore unable to accept the case of the petitioners that Sri Dhangar went to the Brahma Press on 6th December 1951 and placed order for the printing of the leaflet Ex. P1. As I have said above the burden lay on the petitioners to prove their case on this point. It will not be proper to shift the burden to Respondent No. 1 to prove a positive case that Udai Bhan Pal got this leaflet printed.

There is another aspect of the case which may be considered. The case of the petitioners is that there was a Satti Bahi in which the account of the printing of this leaflet was entered and the petitioners want us to believe that it was replaced by the documents produced by Mohanji in this case. We have therefore to assume that Respondent No. 1 had such influence on Mohanji that he would get the Satti Bahi removed and replaced by the papers filed in this case by him. There is no evidence that Respondent No. 1 had such influence or he exercised any influence. It will not be out of place to notice here one more fact. The witnesses Ayodhya Prasad and Surendra Singh only say that Respondent No. 1 placed order for the printing of Ex. P1. They do not say that it was actually printed and delivered to Respondent No. 1. It required a third visit by them to the Brahma Press and perhaps it was thought too many co-incidences would create more doubt and they were not asked to swear to a third visit and meeting Respondent No. 1.

In these circumstances and in this state of evidence I hold that the petitioners have failed to prove that Respondent No. 1 got the leaflet Ex. P1 printed at the Brahma Press.

This brings me to the question of the distribution of leaflet Ex. P1. The approach to this case by my learned colleague Sri Faruqi is to hold first that this leaflet was distributed by Respondent No. 1 and then naturally to hold that Respondent No. 1 got it printed. I respectfully beg to differ from this approach to the case. I have therefore considered the question of printing of the leaflet Ex. P1 first.

I shall now deal with the question of distributing of this leaflet Ex. P1.

It is admitted by Respondent No. 1 that he did issue a leaflet Ex. P2 and distributed the same. The petitioners wanted to fasten the responsibility for the distribution of Ex. P1 also on him. They had witnesses to say that Ex. P2 was distributed by Respondent No. 1; all that they did was to ask these witnesses to depose that Ex. P1 was also distributed and in a constituency of between sixty to seventy thousand of voters it was not at all difficult to find out twenty persons or so to oblige the petitioners by adding in their statements that Ex. P1 was also distributed. A small twist and turn and the object is accomplished.

My learned colleague has dealt with the evidence of eighteen witnesses out of twenty produced by the petitioners. He has not dealt with the evidence of Risal Singh petitioner and P.W. 8. If his statement is to be believed, leaflet Ex. P1 was distributed in July or August which even according to the petitioner's evidence is much before the alleged printing of Ex. P1. I have dealt with his evidence in another connection. Obviously this hopeless statement was not worthy of notice and was left alone; but we cannot lose sight of the fact that he is one of the petitioners.

Of the witnesses produced, I have gone through these statements and I find that the time of distribution given is very vague and indefinite and, except for distribution in Sirsaganj, the distribution in other place has been tried to be proved by the examination of one witness only. The witnesses produced give the time of distribution at the end of November or beginning of December and end of December, Katick, Aghan or Pus and so on. In this state of vagueness

the witnesses could state anything without fear of contradiction in cross-examination. I shall not deal individually with the evidence of all the witnesses. I shall take a few instances by way of test. Take the very first witness Ram Sahai. He states that he attended one of Sri Dhangar's meetings at village Eatoli, Sajahanpur; in that meeting leaflet Ex. P1 was distributed and the said meeting was held towards the end of November or beginning of December and he was not sure if the nominations had taken place by then or not. This meeting was attended by one Ishri. He further says that he is a Brahmin and that he happened to be present in the meeting as he was returning from Karhal market that day and seeing Sri Dhangar speaking went to the meeting. There were no men of the Bania, Thakur or Ahir community in the meeting though there were a few Brahmins. He is purely casual witness and no reliance can be placed on the evidence of such a witness. Regarding the meeting in his own village, Pairar Shahpur he says that it was not attended by any village Brahmins except himself and he further said that in this meeting leaflet Ex. P2 was distributed and not Ex. P1. I am unable to accept the statement of this witness as proving beyond all reasonable doubt, distributing of leaflet Ex. P1 by Respondent No. 1. Ishri has been produced as a witness by Respondent No. 1 and he denies the meeting.

Of the witness produced on behalf of the petitioners, I shall briefly discuss a few witnesses who are important. I shall deal with the statement of Sri Badshah Gupta. He is a member of the House of the People. In the last election he was a candidate from Mainpuri East constituency which included the constituency of Respondent No. 1 and he toured in that constituency. His statement is that he heard from various persons that the propaganda on behalf of Respondent No. 1 was on of communal lines. He says in his statement the purport of his propaganda which he described was as follows, "That Sri Dhangar and his companions had omitted such poison and had created hatred in the hearts of *low caste* people against the *high caste* people, with the result that the low caste people had forgotten all the good done for them by the Congress and were bent upon making their own caste follow Sri Dhangar successful and were not prepared to listen to any reason." This propaganda is on the lines of leaflet Ex. P2 and not of Ex. P1 and was only an expression of the opinion of the K.M.P. Party of which he was a member. It was not a propaganda that Gadarias should vote for Fadarias which is alleged to be the purport of Ex. P1. Regarding the Ex. P1 this witness says that he saw these leaflets in Sri Dhangar's constituency but he never saw it distributed anywhere. He further says that he did not try to obtain a copy of Ex. P1. It seems to me that evidence of this witness is hearsay and no more. He states that to counteract this communal propaganda or Sri Dhangar he had a leaflet issued on behalf of Congress which is Ex. P15. In this Ex. P15 there is no mention of Sri Dhangar or his propaganda or the leaflet which it was intended to counteract. I have read the leaflet and it seems to be the usual leaflet circulated on behalf of the Congress party. I shall not accept the statement of this witness as proving beyond all reasonable doubt that Ex. P1 was distributed by Respondent No. 1 in his constituency.

I will now deal with the statement of Pt. Sia Ram. He was a candidate for election in this constituency. He does not say that leaflet Ex. P1 was distributed in his presence. He says that he came across only one copy of leaflet Ex. P1 and that was at Pithepur where it was shown to him by one Hulkar Gadaria. This Hulkar Gadaria has not been produced. It is said that this leaflet Ex. P1 was widely distributed in the constituency but it is surprising that he saw only one copy. He also says that there was communal propaganda by Respondent No. 1 and leaflets were issued by the Congress to counteract the same. He says "as far I remember, in the local literature issued on my behalf something was said against communal propaganda but it was not specifically mentioned in that literature that communal propaganda was carried on by means of the leaflet "Gadaria Bandhuon se appeal" or "Apke labh ki bat". Ex. P15 of this type and I am of opinion that no leaflet was issued by the Congress to counteract the alleged communal propaganda of Respondent No. 1.

I selected Rameshwar Dayal P.W. 4 to find out what he says about the distribution of leaflet Ex. P1 as he pays as income-tax of over Rs. 10,000 and is Chairman of Sirsaganj Town Area. I have read his statement and I find that he says nothing about the distribution of leaflet Ex. P1.

The next witness whose statement I shall consider is Sita Ram P.W. 5. His family pays income-tax of about Rs. 8,000 a year. He says that he attended two or three meetings of Sri Dhangar. One of such meeting was at market Rikasgani Mandi. He did not go to the meeting but he heard it sitting at the office of Veopar Mandal. He says however "I do not remember if any leaflets

were distributed in this meeting. Regarding Ex P1 he says that he saw it on the second or third day of the first meeting for the first time. It was shown to him by his servant Ganga Ram. The first meeting referred to was of Gadarias only at the Thar of Deoji Kachhi. He happened to go to his brick kiln at that time and just stopped for a few minutes to hear the speech of Respondent No. 1. He does not say that leaflet Ex P1 was distributed in his presence. He only saw it later as stated above. Like other witnesses he is a casual witness. He is a voter, goes to the polling station but does not cast his vote. He stays at the polling station to see Respondent No. 1, voters being conveyed in vehicles in order to be a witness later on.

The Respondent has produced several witnesses who say on oath that what the petitioner's witnesses have said are altogether incorrect. These witnesses are Brahmans, Thakurs, Vaishnavs and of other castes. I do not wish to go further in this matter and I hold that Respondent No. 1 did not distribute in his constituency Ex P1. I may conclude by saying that Ex P1 is not a document which is hit by the provisions of Section 124(5) of the Representation of the People Act. The title of the leaflet is said to be mischievous if we do not read the document itself. The document calls upon Gadaria to help the various Gadaria candidates including Respondent No. 1 with workers, money, conveniences etc to make their election success. It is no where says that these workers should canvass for votes for the Gadaria candidates from Gadarias voters. It only means that the workers should canvass for votes in the whole electorate among all castes in order to secure the largest number of votes. It is not corrupt practice and we should not be misled by the name given to the leaflet and I am of the opinion that if Respondent No. 1 had recalled this leaflet printed and distributed he would not disown it as there was nothing in it against law.

Therefore, for the reasons given above I decide Issue No. 6(b) in the negative.

Issue No. 7—I agree with my learned colleagues regarding the decision of this issue.

Issue No. 8—I agree with my learned colleagues regarding the decision of this issue.

Issue No. 9—In discussing this issue my learned colleagues have divided it into three parts:

- (a) The cost of the printing of the leaflet Ex P1 "Gadaria Bandhuon se appeal" not shown in the return of election expenses. This cost is said to be about Rs. 10/-.
- (b) The Respondent No. 1 purchased a motor truck for the election use and showed its price and maintenance charges under a wrong head.
- (c) The Respondent No. 1 along with his brother borrowed Rs. 2000/- to meet expenses of his election by mortgaging his house on 20th August 1951, but failed to show this amount in his return of election expenses.

So far as item No. (b) is concerned I agree with my learned colleagues in their finding and reject the petitioner's case on this point.

As regards the item No. (c) I agree with the finding of the learned Chairman and hold that Respondent No. 1's return of election expenses is not at all false in this respect.

Regarding item No. (a), in view of my finding that Respondent No. 1 did not get Ex P1 printed and distributed in his constituency, this point does not arise. As my learned colleagues have differed from my finding on this point, I have to consider whether the omission on the part of Respondent No. 1 in not showing the cost of printing Ex P1 in his return of election expenses amounted to making the return false in any material particulars.

In deciding this part of the case I shall assume that Respondent No. 1 did get a leaflet Ex P1 printed and distributed as alleged. I have already discussed in another part of the judgment, that the leaflet Ex P1 is not a leaflet prohibited by law and is not against the provisions of Section 124 (5) of the Representation of the People Act and it is not a corrupt practice to distribute such a leaflet. The cost of printing this leaflet is said to be about Rs. 10/- and if this sum be added to the amount shown in the return of election expenses made by Respondent No. 1, it will not exceed the prescribed maximum limit. Under these circumstances I agree with the finding of the learned Chairman that the omission of the cost of printing of Ex. P1 from the return of election expenses does not make the return false in any material particular.

I therefore hold that the minor corrupt practice as defined in Section 124(5) of the Act has not been proved against Respondent No. 1 in this case.

Issue No. 10.—This issue relates to the corrupt practice of hiring and procuring vehicles for the conveyance of voters to the polling stations.

The petitioners have prepared their evidence on this part of the case with clock-like precision and witnesses are not wanting to come forward and depose that voters were carried to the polling stations from morning till evening in motor truck, ekkas and bullock carts in all the polling stations. This was done in the presence of candidates, their workers and agents and we find no objection made by any one at any time in any of the polling stations. It is inconceivable that such a systematic conveyance of voters would take place and not a whisper of complaint was made. I do not propose to solemnly discuss the oral evidence, there is nothing but oral evidence on this point. I put one infallible test namely whether any report was made to the Presiding Officer or Polling Officer at any polling station. It is not alleged that any such report was made in writing. Governed in his cross-examination Sri Mudgal one of the candidates and P.W. 6, says that he complained about it orally to the Presiding Officer of Pairar Shahpur but he repelled that it was useless as the polling time was over. The Presiding Officer of the said polling station has not been produced and I do not believe that any complaint was made by any one even orally.

I agree with the findings of my learned colleagues on this issue and hold that the corrupt practice defined in Section 123(6) of the Act has not been proved against Respondent No. 1.

Issue No. 11.—In view of all that has been said above, I hold that the petitioners are not entitled to the reliefs claimed and the election petition must be dismissed. In the special circumstances of this case I would order the parties to bear their own costs.

(Sd.) A. SANYAL, *Advocate Member.*

The 20th February, 1954.

ORDER BY THE TRIBUNAL.

All the three members are of the opinion that the Election Petition must be dismissed with costs on parties. Further, two Members are of the opinion that no corrupt practice, minor or major, has been proved in this case and so no question of any disqualification of the Respondent No. 1 for Membership under section 140 of the Representation of the People Act arises, whereas the third Member, Sri Faruqi, is of the opinion that the Respondent has been guilty of the minor corrupt practices defined in section 124(4) and (5) of the Act which entails upon him a disqualification under section 140 of the Act; because of this difference of opinion among the Members, on this point the opinion of the majority must prevail and it must be held that no disqualification is entailed. The result is that the Election Petition is dismissed with costs on parties.

(Sd.) R. SARAN, *Chairman.*

(Sd.) A. SANYAL, *Advocate Member.*

(Sd.) M. U. FARUQI, *Judicial Member.*

The 20th February, 1954.

ANNEXURE A(1)

ELECTION PETITION NO. 282 OF 1952.

Sri Shiva Dutt and others—*Petitioners.*

Versus

Sri Banshi Das Dhangar and others—*Respondents.*

ORDER

This petition was presented by voters of Karhal West-cum-Shikohabad East Constituency of Uttar Pradesh Legislative Assembly. Respondents 1 to 10 were the duly nominated candidates for the election, out of whom Respondents Nos. 9 and 10 withdrew their candidature within the time allowed by law, and Respondent No. 7 withdrew in favour of Respondent No. 4 after the expiry of the period provided for the withdrawal of the candidature. The election was held on January 22, 1952. Counting took place on February 3 and 4, 1952, and as a result of counting Respondent No. 1 was declared duly elected by the Returning Officer. The return of election expenses was lodged with the Returning Officer along with

the requisite declaration and the notification regarding the lodging of the return of election expenses was published in the official Gazette on May 3, 1952. This petition was filed on May 17, 1952. The petition purports to have been signed by all the seven petitioners but by an authority given by six of the petitioners, petitioner No. 1 i.e., Sri Shiva Dutt verified the petition according to law. There are 14 paragraphs in the petition, and in all the relevant paragraphs in which the concise statements of the allegations are contained, reference is made of the lists in which detailed particulars of the allegations made in the petition are contained. Along with the petition seven lists embodying the particulars were filed. These lists were signed by Shiva Dutt but were not verified by him in the manner provided in the Civil Procedure Code, as laid down in section 83 sub-section (2) of the Representation of the Peoples Act 1951, hereafter called the Act. On June 21, 1952, the Secretary of the Election Commission sent a letter to Shiva Dutt informing him that the lists filed by him along with the petition were not verified in the manner provided in the Civil Procedure Code as required under sub-section (2) of section 83 of the Act. He asked the petitioner to make good the deficiency within the period of 15 days from the date of the letter failing which, the letter proceeded, the petition would be dismissed under section 85 of the Act for non-compliance of the provisions of section 83 sub-section (2). At the end of the letter, it was said that the letter was to be read as without prejudice to the provisions of law applicable to the case. In answer to this letter of the Secretary of the Election Commission, Shiva Dutt and others sent a reply dated July 2, 1952, which was received by the Commission on July 3, 1952. In that letter, they stated that the contents of the petition which included the particulars of the corrupt and illegal practices accompanying the petition contained in lists I to VII were referred to in the petition, and were thus signed and verified. They, however, stated that as the Commission asked them to file separately signed and verified lists, they were doing so. Then followed in the letter lists which are exactly the same as were filed along with the petition. The subsequent lists were duly verified by Shiva Dutt and were signed by all the petitioners. The Commission, after receipt of the reply, did not dismiss the petition under section 85 of the Act but acting under section 86, appointed this Tribunal for the trial of the petition. On receipt of the petition, this Tribunal issued notices to the Respondents and only Respondent No. 1, Sri Bansi Das Dhangar, appeared to contest the petition. Rest of the respondents did not appear despite service. Contention of the Respondent No. 1, *inter alia*, was that the petition was not properly signed and verified according to law; that the list accompanying the petition was not verified as required under section 83, sub-section (2) of the Act; that the subsequent list filed by the petitioner before the Election Commission on July 3, 1952, could not be taken into consideration, because it was filed beyond time; and also because it was not duly signed and verified according to law. It was further pleaded that because of the non-compliance with the provisions of sub-section (2) of section 83 of the Act, the petition was liable to be dismissed under section 90, sub-section (4) of the Act. There were other allegations as well but we are not concerned with them at present. Several issues were framed by the Tribunal, out of which issues 1 to 4 are on preliminary points, and parties agreed that findings on these issues should be given prior to the decision of the petition on merits. Parties however, did not adduce any oral evidence regarding the first four issues. The first four issues are as follows:—

- (1) Are the original election petition and the list duly signed and verified according to law? If not, its effect?
- (2) Is the subsequent list reaching the Election Commission India on 3rd July, 1952, duly signed and verified according to law? If not its effect?
- (3) Is the subsequent list reaching the Election Commission India on 3rd July, 1952, time barred? If so, its effect?
- (4) Is the Election Petition liable to be dismissed for not being accompanied by any valid list?

Issue No. 1.—The petition covers several leaves, all the leaves are of blue paper excepting the last one which is of white paper. Contention of respondent's learned counsel was that the signatures of the petitioners were taken on a white paper, while it was blank and that the petition was drawn up and typed subsequently, meaning thereby, that the petition was not properly signed by the petitioners after knowing and understanding the contents thereof. During the course of arguments our attention was also drawn to the fact that the names of the petitioners were typed at the end of the petition but signatures of the petitioners did not appear against the typed names. The same appeared at the right hand bottom corner of the paper, below the place where the names were given in type. From this also learned counsel for respondents wants us to infer that the petition was drawn up after the signatures of the petitioners had been taken on a blank paper. The whole argument is based on surmises. It is impossible for us to hold that the

petition was drawn up on a paper which already contained the signatures of the petitioners. Nor are we prepared to hold that the petitioners did not understand and know contents of the petition at the time when they made their signatures. From the subsequent conduct of the petitioners when they sent the letter to the Election Commission it is quite manifest that they fully endorsed the contents of the petition and of the lists attached with it. Therefore it would be wrong to conclude from the Facts pointed out by the learned counsel for the respondents that the petition was drawn up after the signatures of the petitioner had been taken on a blank paper.

So far as the verification of the petition is concerned, that too in our judgment is in accordance with law. It is clear that substantial compliance of the provisions of law has been made and the verification is not such which might result in the dismissal of the petition on that score.

As regards verification of the lists which are attached with the petition, they are not verified separately. But are signed by Shiva Dutt, the main petitioner, who was authorized on behalf of the other petitioners to verify the petition.

The main contention of the respondent's side was that sub-section (2) section 83 enjoined that the lists should be filed along with the petition as the lists filed by with the petition in this case are not verified, it was argued there was no compliance of the provisions of law and therefore the petition was liable to be dismissed under section 80 sub-section (4) of the Act without entering into the merits of the case. There is also no doubt the fact that the section referred to above enjoin that the petitioning particulars of corrupt and illegal practices should be verified according to law. But in this case the lists, as appears from the content of the petition, form part of the petition itself. Therefore verification of the petition must be construed as verification of the lists as well. Though the technical defect still remains but it is not such as might make us throw out the petition on that ground. The object of giving particulars in a list and the object of the verification of the lists is to inform the respondent about the allegations that were being made against him regarding illegal and corrupt practices and also to pin down the petitioner to certain definite allegation. Verification is also enjoined in order to pin down the petitioner to certain specific facts and circumstances and also in order to make him responsible under law for the allegations made therein. That object is fully served if the particulars are made part of the petition which is duly verified according to law.

The question which we have to decide is whether the petition should be dismissed for non-compliance of the provision of Section 83 of the Act. If we read the section in a strict and narrow sense it means that a petitioner should draft his petition so as to give a "concise statement" of the material facts and this should be accompanied by a list setting forth full particulars of corrupt or illegal practice. The argument of the counsel for the respondent is that in the present petition a list is given but as it is not verified separately the petition does not conform with the strict rule as given in section 83(3) and must be thrown out. *There are cases*, to be cited presently, in which various Tribunals have held that if the particulars are embodied in the petition and no separate list is filed there is substantial compliance with the provisions of the Act and the petition should not be thrown out. In the present case there is a list and the various kinds of corrupt or illegal practices are detailed therein. In order to make the petition concise the petitioners have not detailed the particulars of corrupt or illegal practice in the paragraphs themselves and have made reference to the various lists of particulars in the said paragraphs. The paragraphs of the petition have been verified and thus the particulars have also been verified. Is it such a departure from the form that we must dismiss the petition? We should not make a fetish of the form and refuse to look at the substances. It has been argued that the law relating to Elections is technical and should be strictly followed. The law is no doubt technical but we should not make it more technical at the cost of substantial justice.

In this case what the petitioner did was that they filed the lists and made them part of the petition by making reference thereof in different paragraphs of the petition. Therefore the only thing that can be said is that they did not file any separate list containing particulars of the allegations of corrupt and illegal practices as is required under section 83 sub-section (2). But as pointed out above, substantial compliance of law has been made when that lists are made part of the petition itself. Therefore to throw out the petition only on the ground that separate list duly verified has not been filed would be to interpret the law too strictly which, under the circumstances of this case, is not called for. In a case *Khan Bahadur Shah Muhammad Yahya Vs. Choudhry Muhammad Nazirul Hasan* reported in *Sen and Poddar's Indian Election Cases* page 549 a similar point arose for decision. It may be noted that in that case the question of interpretation of Rule 108(3) of

Bihar Legislative Assembly Electoral (Elections and Election Petitions) Rules of 1936 arose. That rule was substantially the same as sub-section (2) of section 83 of the Act. The petition in that case contained the list of particulars and the petition at the end was duly verified according to law. Contention of the respondent's side in that case was that as no separate list was filed along with the petition was required under sub-rule (2) of rule 108, the petition was liable to be thrown out. The Commissioners held that there was substantial compliance with the requirements of rule and that technical non-compliance with it would not be fatal. They remarked:—

"If the election petition contains all the particulars required in sub-rule (2) as in the present case, it is immaterial that a separate list with the requisite full particulars is not annexed."

And further on.

"Where the whole aim and object of the legislature would be plainly defeated if the command to do a thing in a particular manner, did not imply prohibition, no doubt can be entertained as to the intention, namely, that the direction is to be taken as imperative. All that is required by the present rule is that there must be a clear unequivocal notice to the other side of the details of a corrupt practice. If the same is given in the petition itself, why would the absence of a separate list non-suit the petitioner?"

We are in full accord with the view taken in this case.

The other case recently decided which can usefully be referred to is *Sri T. Prakasam Vs. Dr. U. Krishna Rao* and others published in the official *Gazette of India, Extraordinary, Part II, Section 3*, dated January 5, 1953. In this case the details of corrupt and illegal practices were embodied in the petition itself. The question arose as to whether the details given in the petition should be taken as substitute for the lists that the petitioner should have filed along with the petition under section 83(2) of the Act. The observation made by the Tribunal at page 23 were as follows:—

"No new allegations have been made. How far those allegations amount to allegations of corrupt and illegal practices is a matter which has not been argued and we are not dealing with it at present. All that could be said is that these allegations were not put in the form of a separate list. To dismiss the petition on the ground that these allegations do not appear in the form of a list, though they do find a place in the petition, would be a too narrow and technical view of section 83(3), insisting on the form rather than on the substance. We do not mean to say that a failure to comply with the requirements of section 83(2) which is wilful and deliberate should be excused. But the circumstances of this case are peculiar. The list subsequently filed sets forth only the same allegations as are found in the petition regarding corrupt and illegal practices and the petitioner seems to have been under the *bona fide* belief that a separate list was not necessary. We, therefore, hold that the petition is not liable to be dismissed on this ground."

In the case before us, the same thing happened under a *bona fide* belief. The petitioners made the details of corrupt and illegal practices part of the petition and by doing so, they thought that they were complying with the requirements of law. That they acted under a *bona fide* belief is apparent from their subsequent conduct. When the Commission called upon them to verify the list, the petitioners answered that they had complied with the requirements of law by making the lists part of the petition itself which was duly verified. The lists filed by the petitioners along with the petition are not a separate document but by making reference of the list in the petition, the petitioner made the lists part of the petition. When once it is found that the details of corrupt and illegal practices are embodied in the petition itself, it is manifest that, when the petition has been verified, the details aforesaid are also verified along with different paragraphs of the petition. This being so, it is clear that the requirements of law have been complied with in substance. To insist that it was incumbent upon the petitioners to file a separate list, which should have been duly verified would be to make the provisions of section 83(2) too narrow. Our finding, therefore, is that the petition does not suffer from the defects pointed out from the side of the respondent and that it is not liable to be dismissed.

Before closing this part of the order, we may refer to some of the cases cited from the side of the respondent. Two cases of the State of Bombay decided by the same Tribunal were cited. They are *Patel Vs. Parikh* published in the *Gazette of India, Extraordinary, Part I, Section 1*, dated October 10, 1952, page 2262. The

other case is Bhansali Vs. Joshi published at page 1 of the Gazette of India Extraordinary Part I Section 1 dated October 14, 1952. Both these cases are distinguishable from the case before us. In these cases, the Tribunal after considering the details given by the petitioner in the petition or in the list came to the conclusion that the details were too vague and indefinite. They found that the details given did not fulfil the requirement of sub-section (3) of section 83 of the Act. Being of this view, the Tribunal in each case dismissed the petition. Paragraph 9 of the judgment in the Bhansali's case clearly shows that out of the three lists A, B and C, list B was not considered in the judgment because, under some previous order contents of which are not made part of the judgment, that list was out of consideration. Lists A and C were duly verified. Hence the same could not be thrown out. Those lists were not considered to be lists within the meaning of sub-section (2) of section 83 because the Tribunal held that the same did not contain full particulars. In other words the Tribunal found them too vague and indefinite to be considered on merits. In the case before us, the only question for decision is as to whether if the details, which should have been given in a separate list, are given in the petition itself, it would be sufficient compliance of the law. This point was not considered by the two cases referred to above. We were also referred to a case of Gorakhpur Tribunal Sri Debí Prasad Versus Sri Muhammad Nasir and others published in the U.P. Gazette Extraordinary, dated January 27, 1953, at page 1. That case is also distinguishable from the present case because in the present case the lists form part of the petition and are, therefore, properly verified within the provisions of law. But in the case referred to above, the list was not verified. Therefore the Tribunal held that provisions of section 83(2) were not duly complied with and in the result it dismissed the petition on that ground.

Hence, in view of what is stated above, we find that the original election petition is duly signed and verified and as the lists form part of the petition, the same should also be deemed to have been duly verified along with the petition.

Issues 2 and 3.—Regarding the list of particulars sent to the Election Commission in reply to their letter, dated 21st June, 1952, it is worthy of note that this list submitted the second time is exactly the same as the list annexed to the original petition and this list of particulars has been verified and sent to the Election Commission within the time allowed by them. It was argued from the side of the respondent that this list also was not verified according to law. The main reason was said to be this that in the typed verification June 30, 1952, was given as date of verification whereas July 2, 1952, was given under the signatures of Shiva Dutt. It was contended that this was not proper verification. Fact of the matter seems to be this that the list was typed and was to be presented on June 30, 1952. For some reason the list could not be signed and presented on that date. It was signed on July 2, 1952. Shiva Dutt wrote the date below his signature but being probably unacquainted with English did not change the typed date (June 30, 1952) given in the verification. This point, therefore, has no weight at all. It has been argued that his list has been filed beyond limitation and the Election Commission has not condoned the delay. There is no doubt that the list sent the second time was filed beyond limitation but it must be held in the present case that the Election Commission did condone the delay though there is no application for condonation of the delay and no specific order regarding the same. Our reasons are these—The Election Commission by their letter, dated 21st June, 1952, drew the attention of the petitioner to the formal defect that the list was not verified and gave him 15 days time to make good the deficiency. At the end of this letter there is a significant sentence. It says, "This letter is to be read as without prejudice to the provisions of law applicable to the case." The Election Commission gave the petitioner the opportunity under a distinct understanding that it would be subject to their discretion to condone the delay or not. The petitioners made good the deficiency and sent a verification list which was accepted by the Election Commission which sent on the petition for trial before this Tribunal. There is no doubt that ordinarily an application to condone the delay is filed and an order passed on the application. In the present case, the Election Commission called upon the petitioners to make good the deficiency and, if we may use the expression, offered to consider the question of condonation of delay if a verified list was filed. In compliance of the order of the Commission the verified list was filed and accepted by the Election Commission. Therefore no specific order became necessary. It is argued that the Tribunal can consider the question of the limitation again and should use its discretion and dismiss the petition. It is no doubt correct that the Tribunal can consider the question of limitation on the merits and we have considered that merits and we are of the opinion that the present case is a fit one in which we should exercise our discretion in favour of the petitioners. The petitioners were all along of the view that the list annexed to the petition had been verified and we are of the opinion that they did not act negligently in taking that view. There may be an error of judgment but it was a *bona fide*

error and it is proper in this case to accept the list submitted the second time as within time and treat it as part of the original petition. Thus the petition is in proper form as required by section 83 of the Act.

There is another aspect of the case which, we think, requires consideration. Section 83 of the Act is headed "Contents of petition." The Act provides that the petition should be divided into two parts, namely, (1) Concise statement and (2) List of corrupt and illegal practice. The two together make up the petition. It is wrong to say that the list is something separate from the petition. In the present case, we may take it, that the petition was filed without a list and when the list was submitted the second time it became the complete petition and it may be deemed in law to have been presented on 3rd July 1952, when the particulars reached the Election Commission. There was thus delay in presenting the petition and it was within the competence of the Election Commission to condone the delay in presenting the petition within the period prescribed therefor.

It is necessary to notice here the actual words in the proviso to Section 85. It reads as follows,

"Provided that if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor, this Election Commission may in its discretion condone such failure."

It is the delay in presenting the petition that is condoned. Our attention has been drawn to some decisions of other Election Tribunals who have held that there was no provisions in the Act to condone the delay in filing the "list" later on. This reasoning, in our opinion, is not correct. Those Tribunals have in arriving at this decision, split up the petition into two parts, (1) the petition itself, namely, the concise statement and (2) the list of corrupt or illegal practice which accompanied the petition. On a correct reading of Section 83, it is not proper to split up the petition in this way and to hold that the concise statement is the petition and the list, which is part of the petition, is not the petition. The two together make up the petition, and in the present case, the petition became a complete petition when the list was filed the second time and was received by the Election Commission on 3rd July, 1952. There was thus delay in filing the petition and the Election Commission was empowered under the proviso to Section 85 of the Act to condone the delay and they have condoned the delay, for sufficient cause. This is true that the matter can be re-agitated before us. By use of word 'may' in section 90(4) of the Act we are vested with discretionary powers. It is, therefore, to be seen whether the circumstances of this case call for the use of our discretion for the petitioners or against them. We have examined the circumstances of the case and we are of the opinion that the Election Commission in the present case condone the delay and that we too should exercise our discretion in favour of the petitioners. At this stage we again refer to the remarks made by a Madras Tribunal in the case of T. Prakasam cited above. Reference was made from the side of the respondent to case Khilumal and other Vs. Arjun Das and 21 others published in the Gazette of India Extraordinary Part I Section 1 dated November 17, 1952. In that case last date for filing petition was May 24, 1952. The petition was sent on May 23, 1952, through registered post reaching the Election Commission on May 26, 1952. The Commission sent the application to the Tribunal for decision. Several points arose before the Tribunal for consideration which were as follows:

1. Is the post Office an agent of the Election Commission?
2. Was the delay in presentation of the petition condoned by the Election Commission?
3. Is there a sufficient ground for condoning the delay?

The Tribunal decided the first point in the negative. Regarding the second point it found that in the absence of any application for condoning the delay and in the absence of any written order of the Commission it was not possible to hold that the Commission condoned the delay. Regarding the third point the Tribunal thought that section 5 of the Limitation Act did not in terms apply to election cases and that it was doubtful if the Tribunal had discretion to condone the delay. It, however, remarked,

"It can, therefore, be only on the principles of justice, equity and good conscience that the Tribunal, assuming that it has such a discretion, may condone the delay."

The Tribunal then proceed to consider the matter on the merits, and came to the conclusion that there was no justification for the petitioner to remain inactive

for 59 days out of the 60 days of limitation and on the 60th day to send the petition by registered post.

Facts of the present case are different. In this case the petitioners, not because of any negligence on their part, entertained *bona fide* belief that by making list part of the petition they had substantially complied with the requirements of law. It is a matter of every day affair in civil cases that long genealogical tables and long lists of properties are given in different schedules which are made part of the plaint. The petitioners or the lawyers who drafted the petition on their behalf acted under the same *bona fide* belief that they were adopting the right procedure.

When the petition reached the Election Commission it called upon the petitioners to file a duly verified list within 15 days and informed the petitioners that the order that was made without any prejudice to the opinion that the Commission might entertain after receipt of the list. The list was received duly verified. The Commission did not reject the petition after receipt of the list. It, acting, under section 86 of the Act, constituted this Tribunal for deciding the petition. As pointed out above the Commission under the circumstances given above must be held to have condoned the delay. It appears that attention of the Tribunal which decided the afore-cited case was not drawn to section 85 and to the implications if the provisions of that section are acted upon. The proviso of section 85 does not require that there should be any application for condoning the delay nor does it lay down that there should be any order of the Commission in writing on the point. We are, therefore, of the opinion that in the present case it follows from the course which the events took that the Commission did condone the delay.

Condonation of the delay by the Commission, however, does not fetter the powers conferred on the Tribunal under section 90(4) of the Act.

As remarked in the case cited above our finding on the point should be guided by the principles of justice, equity and good conscience. Looking to the facts of this case as discussed above, we are definitely of opinion that the case is a fit one in which we should exercise our discretion for the petitioners and should hold that the duly verified list filed for the second time on July 3, 1952, should be treated as duly filed within the meaning of section 85 of the Act.

The passage cited above from Khilumal's case shows that the Tribunal which decided that that case entertained some doubt as to whether it had discretionary power in the matter. But a perusal of sub-section (4) of section 90 of the Act will show that word 'may' used therein clearly confers discretion and empowers the Tribunal either to dismiss the petition or proceed to hear it if it is barred by time. Such discretion is to be exercised judicially and the present case is a fit one in which the discretion should be exercised in favour of the petitioners.

In this view of the matter we come to the conclusion that the list filed for the second time before the Election Commission on July 3, 1952, was duly signed and verified according to law, that though the same was filed beyond time the delay was condoned by the Election Commission and that, under the peculiar circumstances of the case discussed above, we exercise our discretion in favour of the petitioners and hold that the petition should be heard on merits.

Issue No. 4.—We have decided issue No. 1 for the petitioners. Issues Nos. 2 and 3 have also been similarly decided. Therefore in the light of the findings recorded above we hold that the petition is not liable to be dismissed and it shall be heard on merits according to law.

The 17th March 1953.

(Sd.) A. SANYAL, Member.

(Sd.) M. U. FARUQI, Member.

ANNEXURE A(2) BEFORE THE ELECTION TRIBUNAL, FAIZABAD

PRESENT:

Sri D. N. Roy, *Chairman*.
Sri M. U. Faruqi, *Member*.
Sri A. Sanyal, *Member*.

ELECTION PETITION No. 282 OF 1952.

Sri Shiva Dutt and 6 others—*Petitioners*.

Versus

Sri Bansi Das Dhangar and 9 others—*Respondents*.

ORDER

The petitioners claiming to be registered voters on the electoral roll of Karhal West-cum-Shikohabad East Constituency of the Uttar Pradesh Legislative

Assembly, made this election petition against Sri Banshi Das Dhangar, the returned candidate, who is Respondent No. 1, and against 9 others, who were also the duly nominated candidates for election to that constituency, praying that the election be declared wholly void, or, at any rate, the election of Respondent No. 1 be declared void and be set aside and fresh election be ordered.

Respondent No. 1 stood on the K.M.P. Party ticket; Respondent Nos. 2 and 9 on the Congress ticket; Respondent Nos. 3, 4, 7 and 10 on Independent ticket; Respondent No. 5 on the Socialist Party ticket; Respondent No. 16 on the Socialist Revolutionary Party ticket; and Respondent No. 8 on the Jan Sangh Party ticket. Out of the Respondents referred to above, Respondent Nos. 9 and 10 withdrew their candidature within the time allowed by law; and Respondent No. 7 withdrew in favour of Respondent No. 4 after the expiry of the period provided for the withdrawal of candidature. The election was held on the 22nd of January 1952. The counting of votes took place on the 3rd and 4th of February 1952. And as a result of the counting Respondent No. 1 was declared duly elected by the Returning Officer. Respondent No. 1 lodged his return of election expenses which was published in the U.P. Gazette of the 3rd of May 1952. The petitioners made the petition before the Election Commission of India on the 17th of May 1952. The election was challenged on a variety of grounds inclusive of alleged corrupt and illegal practices and irregularities. The petition was signed by all the petitioners and was verified by Sri Shiva Dutt petitioner No. 1 in the following terms:—

"I, Shiva Dutt, one of the petitioners verify the contents of paras. 1 to 14 of the petition partly by personal knowledge and partly by information received and believed to be true.—Verified on 14th May 1952 at Mainpuri."

Along with the petition, seven lists were appended, alleged to be list of the particulars. These lists were referred to in certain paragraphs of the petition. The lists were signed by Sri Shiva Dutt but were not verified by him at their foot. On the 21st of June 1952, the Secretary of the Election Commission of India, drew the attention of Sri Shiva Dutt by a letter to the provisions of section 83(2) of the Representation of Peoples Act, 1951 and told him that the lists submitted along with the petition had not been verified as required by that section, and he requested Sri Shiva Dutt to make good the deficiency within a period of 15 days from that date, "failing which the petition will be dismissed under section 85 of the Act for non-compliance of the provisions of section 83." In the same letter, the Secretary of the Election Commission further stated that this letter was to be read as without prejudice to the provisions of law applicable to the case. In reply, the petitioners sent a letter to the Election Commission of India on the 2nd of July 1952 saying that the particulars of the corrupt and illegal practices accompanying the original petition contained in lists I to VII were referred to in the petition and should therefore be treated as signed and verified, but since the Commission required that they should be separately signed and verified, the direction was being complied with. In that letter, the original lists were *verbatim* copied out and at the foot thereof, Sri Shiva Dutt appended the following verification clause signed by him:—

"I, Shiva Dutt, one of the petitioners verify that the contents of the lists I to VII accompanying the petition and given above, partly true to my personal knowledge and partly on information received and believed to be true.

Verified at Mainpuri on 30th June 1952"

Sri Shiva Dutt in addition to what has been stated above, noted on that application below his signature the date, "2nd July 1952."

The Election Commission of India after receipt of the reply, did not dismiss the petition under section 83 of the Representation of Peoples Act, 1951. The Commission acting under section 86 of that Act appointed this Tribunal for the trial of the petition. The petition has been resisted before this Tribunal only by Respondent No. 1 *inter alia* on the ground that it is not framed, signed and verified in accordance with the provisions of section 83(1) of the Act; that it is not accompanied by any list signed and verified and setting forth full particulars of the corrupt and illegal practices as required by section 83(2) of the Act; that the Election Commission acted illegally and without jurisdiction in calling upon the petitioners that since the lists accompanying the petition were not verified, they should cure the defect; that fresh lists submitted by the petitioner were also not signed and verified according to the provisions of the Act; that the alleged verification of the 30th of June 1952 was beyond the time prescribed for the presentation of the petition; that in view of these facts, the petitioner contravened the mandatory provisions of section 83 of the Act with the result that the allegations regarding corrupt and illegal practices are liable to be struck out; and that the

allegations of corrupt and illegal practices have in fact no foundation whatsoever. The other Respondents did not at all enter appearance in the case.

Eleven issues were settled in the case, of which preliminary issues Nos. 1 to 4 which are as follows have been heard by the Tribunal:—

- (1) Are the original election petition and the list duly signed and verified according to law? If not, its effect?
- (2) Is the subsequent list reaching the Election Commission, India on 3rd July 1952 duly signed and verified according to law? If not, its effect?
- (3) Is the subsequent list reaching the Election Commission, India on 3rd July 1952 time barred? If so, its effect?
- (4) Is the election petition liable to be dismissed for not being accompanied by any valid list?

These issues are so interlaced that they may be dealt with together. The contention of the respondent that the original petition was not properly signed does not appear to be acceptable. The grievance of the respondent on this point is based entirely upon surmises. The petition is contained on several sheets of paper, the last one of which is on white paper and the others are on blue papers. The last sheet is signed by all the petitioners inclusive of Sri Shiva Dutt petitioner No. 1; and the earlier sheets are signed by Sri Shiva Dutt alone. It is not necessary that all the sheets should have been signed by all the petitioners. The contention of Respondent No. 1 to the effect that the signatures on the last sheet were made by the petitioners when the paper was blank and that the matter was typed out later on is in the absence of any evidence, based entirely on surmises. In my opinion, the original election petition and the lists appended to the same were duly signed, and I would hold accordingly.

The question next arises whether the original petition and the lists were duly verified. In this connection, reference is to be made to section 83 of the Representation of the People Act, 1951, which lays down as follows:—

- "83. *Contents of petition.*—(1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.
- (2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.
 - (3) The Tribunal may upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition."

It will be obvious from the provisions of this section that an election petition is to contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for verification of the pleadings. Sub-Section (2) of section 83 lays down that the petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice, which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice, and the date and place of commission of each such practice. It would thus be obvious that the verification of the original petition, we would find that the person verifying, did not specify with reference to the numbered paragraphs of the petition that he verified of his own knowledge, and what he verified upon information received and believed to be true. Consequently, there can be no doubt whatsoever that the verification of the original petition was not in accordance with rule 15 of Order VI of the Code of Civil Procedure. It appears that the lists appended to the original petition containing the particulars of the alleged corrupt and illegal practices were not verified at all. The question would be whether non-compliance with these provisions would render the petition liable to be rejected.

As has been held by this very Tribunal in Election Petition No. 267 of 1952—*Sri Bhole Nath Vs. Sri Krishn Chandra Gupta and others*, the powers of the Election Tribunal under the Representation of the People Act 1951 are not co-extensive with the powers of a Court under the Code of Civil Procedure in all respects. An election petition calling in question an election has to be presented within the limited time prescribed in Rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. The election petition has to be presented to the Election Commission under section 81 of the Representation of People Act, 1951. Section 83 of the Act, which has already been quoted above, lays down what the election petition should contain, and what the lists accompanying the petition setting forth full particulars of any corrupt or illegal practices should contain. It further lays down that both the petition and the list should be separately signed and verified in accordance with law. Section 85 of the Act says that if the provisions of section 81, section 83 or section 117 are not complied with, the Election Commission shall dismiss the petition, provided that if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor, the Election Commission may in its discretion condone such failure. Section 90(4) of the Representation of the People Act, 1951 says that notwithstanding anything contained in section 85, the Tribunal may dismiss an election petition which does not comply with the provisions of section 81, section 83 or section 117.

In the Full Bench decision of *Rajit Ram Versus Kateshar Nath* (I.L.R. XVII, Allahabad 396), the verification of the plaint was in this form:—

"The contents of the petition of the plaintiff are true to the best of my knowledge and belief."

And it was held that this form of verification, though not free from ambiguity, was in substantial compliance with the provisions of section 52 of the Code of Civil Procedure. That view was followed by us in Election Petition No. 267 of 1952 *Sri Bhole Nath Versus Sri Krishn Chandra Gupta and others*, and there we held that although the verification of the petition is somewhat defective there was substantial compliance with Order VI Rule 15 of the Code of Civil Procedure and section 83 of the Representation of the People Act, 1951. In my view, the same principle would apply to the verification of the petition in the present case. The test to be applied will be this that if the defect is trivial, it will be condoned and if the defect is serious, the election petition will be dismissed.

It admits of no doubt whatsoever that the lists appended to the criminal petition which purported to contain instances and particulars were not verified at all. That defect was noticed by the Election Commission itself when the Commission by its letter, dated 21st of June 1952 called upon the petitioner to remedy the defect within 15 days of that date "without prejudice to the provisions of law applicable to the case". The petitioners by their subsequent letter, dated the 2nd July 1952 referred to above contended that since the lists were referred to in the petition, they should be deemed to have been verified by the petition itself. They further contended that since the Commission required that they should be separately signed and verified, they were complying with that direction. It has been urged on the one side that the procedure was not justified on the part of the Commission and that it should not be deduced that the Commission condoned any delay. On the other hand, it has been contended that since the Commission required that defect to be remedied (if it was a defect at all) and the defect was actually remedied within the time given, and the Commission instead of dismissing the petition under section 85 of the Act referred it to this Tribunal after appointing the Tribunal under section 85, it means that there has been a condonation of delay. It cannot be doubted that if the subsequently verified list which reached the Election Commission on the 3rd of July 1952 were to cover the limitation in the case, these lists prescribed by law and, consequently, the petition would be time barred. The question would therefore be whether there was any condonation of delay, and whether under the circumstances of the case, the petition merits dismissal, or whether it should be proceeded with, and the allegations investigated.

It has been urged on behalf of the petitioners that we should not take too technical a view of the matter, and that we should be guided by broad principles of justice, equity and good conscience, just in the same manner as in civil cases between a party and a party, and that we should not strictly construe the provisions of section 83 of the Representation of People Act, 1951. Charges in an election petition are of a very serious nature and should not be dealt with in the same way as particulars in a civil case. This was the view taken by Bruce J. in the *Lancaster Case* (5 O. M. and H. 41). A passage in Halsbury's Laws of England

Volume 12 page 413 lends support to the same view. Considerations which, therefore, govern the trial of civil disputes between a party and a party will not exactly be the considerations which will determine the hearing of an election petition. It cannot for a moment be doubted that the election law is technical in its formation and it should be strictly construed. The Allahabad Tribunal in deciding Election Petition No. 28 of 1952. *Sri Kalyan Chandra Mohile Versus Sri Bishambhar Nath Pandey* and 10 others (published in the U.P. Gazette Extraordinary, January 27, 1953) held, in considering the provisions of section 37 of the Representation of the People Act, that the provisions must be strictly construed and that the notice of withdrawal was neither legal, nor effective and that the presentation was not proper. In determining that point, the Tribunal was not swayed by the consideration that technicalities should be brushed aside and that the Tribunal should proceed upon a broad view of circumstances in order to do justice between a party and a party. The case furnishes an instance of the proposition that election law is technical in its effect.

It is necessary to observe, as was also observed, in Election Petition No. 33 of 1952 before the Quilon—(Travancore-Cochin)—Tribunal (published in the Gazette of India Extraordinary, Part I—Section 1, dated 11th November 1952) that an election petition and its trial are not on all fours with a plaint in a civil suit and its trial. In the latter, the proceeding is between party and party, whereas in the former the whole Constituency is, in a sense, involved in the trial. An election petition cannot ordinarily be dismissed for default, or brought to an end at the will of the parties, or by the death of any one of them, without giving an opportunity to the others, who might have been petitioners. Elaborate provisions have been devised in the Representation of the People Act in the event of abatement of election petitions, and for the disposal of applications for their withdrawal. They have been enacted, to quote the words of Andrew J. in the North Meath case (4 O'M and H. 185 at 187) to "render it impossible for the Court to sanction any concession which may have the effect of excluding that full disclosure of facts which was one of the objects of the Statute to provide for, or of preventing that through investigation which the Court is bound to make of all the charges relied upon by the petitioner."

With this background, it cannot for a moment be contended that the law relating to elections and election petitions is not technical, or that the same considerations should be brought to bear upon the trial of an election petition as in a trial in a civil suit. As has been held in Election Petition No. 133 of 1952, *Bejay Singh Versus Narbada Charan Lal*, before the Election Tribunal Bhopal (published in the Gazette of India Extraordinary, Part II—Section 3, dated 6th January 1952), the language of the section is so clear that we cannot possibly indulge in the supposed intention of the Legislature. In this connection we cannot forget the duties enjoined upon us by the law as a Court. The function of the Court is merely to interpret the language of a statute. It is not the province of a Court to scan its wisdom or policy. Its duty is not to make the law reasonable but to expound it as it stands. A court is not concerned with the desirability, utility or reasonableness of a particular provision of law, if the language is plain. We are to give effect to it as we find it, irrespective of the consequences it may entail. In *Sadanand Pyne Versus Harinam Sha* (A.I.R. 1950, Calcutta 179), it was observed by Das Gupta and Guha J. J. that "Courts must resist the temptation to change the law under cover of interpretation of law. If they use the power to interpret law, to alter laws which they may not like, and to make new laws which they think should be made, that would be a corrupt use of their power". And I for my part will avoid the sin so ably condemned, in the above observation.

An analogous case like the present one is to be found in Election Petition No. 83 of 1952—*Sri Purshottamdas Ranchoddas Patel Versus Shanti Lal Girdharilal Parikh* decided by the Bombay Tribunal (and published in the Gazette of India Extraordinary, Part I—Section 1, dated 10th October 1952 at page 2261). There the Election Commission invited the attention of the petitioner to the fact that the verification made by him at the foot of the list referred to the paragraphs of the pleadings contained in the petition and not to the paragraphs of the list of corrupt or illegal practices as required by section 83(2) of the Act. The petitioner in his reply thanked the Commission for pointing out the mistake and sent a fresh list along with letter which according to him was duly verified. It was held that the list given in the original petition was not a verified list according to the manner provided in the Code of Civil Procedure and the petition was therefore not accompanied by a valid list, and therefore, there was non-compliance of section 83(2) with regard to the requirement that a verified list should accompany the petition. It was further held that the defect of not filing the list of corrupt and illegal practices as required by section 83(2) along with the petition cannot be allowed to be cured by the petitioners forwarding another list subsequently to the Election Commission.

In a decision by the Election Tribunal of Madras in Election Petition No. 144 of 1952, *Sri T. Prakasam Versus Dr. G. Krishna Rao and others*—(published in the Gazette of India Extraordinary, Part II—Section 3, dated January 5, 1953 at page 13 onwards), it was held that the power of the Election Commission to condone is confined to the delay in presentation and does not extend to failure to comply with the other requirements, and that the order of the Election Commission cannot be construed to deal with the failure to comply with section 83(2) in regard to the list of the particulars.

In a decision of the Election Tribunal of Ajmer in Election Petition No. 298 of 1952—*Sri Khulmal and another Versus Sri Arjundas and others*—(published in the Gazette of India Extraordinary, Part I—Section 1, dated November 17, 1952 at page 2435 onwards), it was observed that the Election Commission did not pass any order condoning the delay in the presentation of the petition, and that from the mere fact that the Election Commission did not dismiss the petition under section 85, but chose to appoint a Tribunal under section 86, it did not follow that it condoned the delay.

The argument advanced on behalf of the petitioners that since the lists appended to the original petition which though not verified were referred to in the petition which was verified, it should be construed that the lists were also by implication or by reference verified in the petition itself does not appear to me to be a sound argument. A similar point arose in a Gujarat case in Election Petition No. 77 of 1952 *Sri Kanaiyalal Durlabhran Bhanush Versus Popatlal Mulhankar Joshi and others* (published in the Gazette of India Extraordinary, Part I—Section 1, dated October 14, 1952 at page 2272 onwards). There it was observed that there is no provision of law to file a fresh list, and that the provision of section 83(2) and the filing of duly verified lists of particulars accompanying the petition were mandatory and, if these provisions are not observed, the petition merited dismissal. In that case the petitioner had filed Exs. A, B, and C with the petition. Paragraph 3 of the petition had reference to Ex. A, Paragraph 6 had reference to Ex. B, while paragraph 11 had reference to Ex. C. The contention of the petitioner was that the paragraphs of the petition read with those Exhibits which were referred to in the petition would be sufficient compliance with the provisions of section 83(2) of the Act. The Tribunal did not accept that contention and held that the petition was not accompanied by a list of corrupt or illegal practice as required by section 83(2) of the petition and was liable to be dismissed under section 90(4) of the Representation of the People Act. The Tribunal further held that even if the averment in the petition itself as amplified by Exs. A, B and C was to be considered, they too did not satisfy the requirements of section 83(2). That case is in my opinion stands on all fours with the present case.

I would in this connection refer to two other decisions of the Gorakhpur Tribunal, the one in Election Petition No. 269 of 1952—*Sri Debi Prasad Vs. Sri Mohammad Naseer and others*—(published in the U.P. Gazette Extraordinary, dated January 27, 1953) and the other in Election Petition No. 199 of 1952—*Sri Mukti Nath Rai Versus Sri Uma Shankar Misra and others* (published in the U.P. Gazette Extraordinary of the same date). In the first of these two cases, the petitioner had filed the list along with the petition in which some details of corrupt and illegal practice alleged to have been committed by Respondent No. 1 or his agents had been mentioned, but those lists were not verified in the manner laid down in the Code of Civil Procedure for the verification of the pleadings. The petitioner had sent an application to the Election Commission later on, and along with that application he had submitted the lists with necessary verification on each page and details. It was held that the petitioner failed to furnish the details of the particulars of corrupt and illegal practices by means of a list as required by section 83 sub-section (2) of the Representation of the People Act within the period of limitation, and that as verification cannot be allowed at the late stage, the petition was liable to be dismissed even though the petition itself was properly verified. In Election Petition No. 199 of 1952 decided by the Gorakhpur Tribunal as stated above, a similar question arose and it was held that the list of particulars filed by the petitioner was liable to be rejected as it was filed after the period of limitation had expired. The Tribunal held that since the election petition contained allegations of corrupt and illegal practices which should have been accompanied by a list duly signed and verified as contemplated under section 83(2) of the Act, and since those provisions were not complied with, there was no proper petition under section 80 of the Act, which could be inquired into.

If we apply the preponderance of opinion on this point to the facts of the present case, I have not the least doubt in my mind that the election petition in the present case was not in accordance with law; that the list accompanying the petition were not at all verified and that the defects could not be cured by submission of a subsequently signed and verified list before the Election Commission

on the 3rd of July 1952 after the period of limitation had expired and that consequently under section 90(4) of the Representation of the People Act, the petition merits dismissal.

It is important to note in the present case that the petition has been made not by any of the duly nominated candidates for the election, who were set up on various party tickets, but by others who claim to be registered voters on the electoral roll. The candidates of the conflicting political parties who contested the election have not come forward to make the petition against the election of the returned candidate, *viz.* Respondent No. 1. This is a factor which cannot be lost sight of. It is true that in section 90 sub-clause (4) of the Representation of the People Act, the word used is "may"; and the section lays down that the Tribunal "may dismiss" the election petition which does not comply with the provision of section 83. The use of the word "may" would imply that the Tribunal has the power not to dismiss a petition in a case, where the provisions of section 83 have been substantially complied with. However in this particular case, I am of opinion that the petitioners have failed to comply with a mandatory provision and have not even substantially complied with the provision of section 83(2) of the Act. When evidence with regard to an alleged corrupt or illegal practice is to be led, the petitioners would be allowed to lead evidence only with regard to the corrupt or illegal practices in respect of which they have given sufficient particulars as required by section 83(2). And when no such particulars are given either in the petition or in a duly verified list accompanying the petition, the averment would have to be ignored and no evidence would be allowed to be led. Thus when sufficient particulars about none of the corrupt, or illegal practices has been given, there remains nothing with respect to which the petition could come to trial, and the Tribunal would have no option, but to dismiss the petition. These are my findings on issues Nos. 1 to 4.

As my conclusions on these issues are different from the conclusions of my learned brothers with whom, I regret, I cannot agree, their view, which is the majority view, shall prevail in this case.

The 17th March 1953.

(Sd.) D. N. Roy, *Chairman.*

[No. 19/282/52-Elec.III/5830.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*

